

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1492

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P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
against

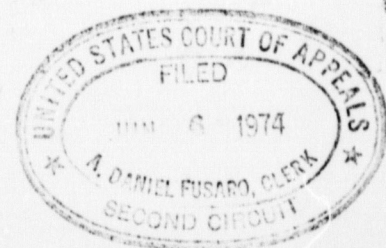
SALVATORE CIRAMI and JAMES CIRAMI,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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Washington, D.C. 20530



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UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

SALVATORE CIRAMI and JAMES CIRAMI,

Defendants-Appellants.

On Appeal From The United States District
For The Southern District of New York.

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

LOUIS MARK, being duly sworn, deposes and says: That he is over twenty-one years of age: That on the 6th day of June 1974 he served three copies of the attached Appendix and Brief for Appellants on Scott P. Crampton, Assistant Attorney General, Tax Division, United States Dept. of Justice, Attorney for Plaintiff-Appellee, by enclosing said copies in a fully post-paid wrapper addressed as follows and depositing same in the United States Post Office maintained at No. 150 Christopher Street, New York, N.Y.

Scott P. Crampton, Esq.
Assistant Attorney General
Tax Division
United States Dept. of Justice
Washington, D.C. 20530

Louis Mark

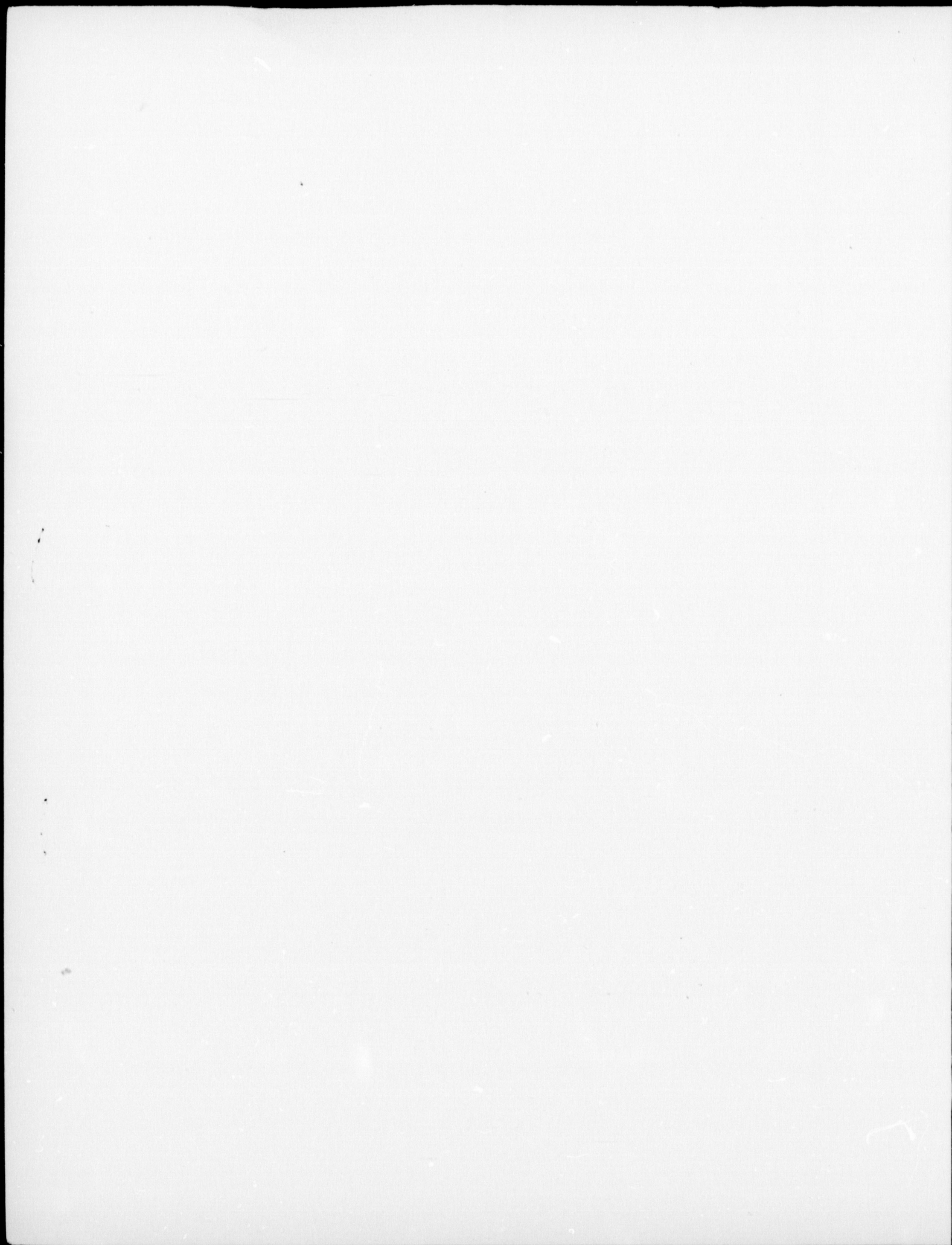
Louis Mark

Sworn to before me this

6th day of June, 1974

Quinton C. Van Wynen

QUINTON C. VAN WYNEN
Notary Public, State of New York
No. 24-4087465
Qualified in Kings County
Commission Expires March 30, 1975



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UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

SALVATORE CIRAMI and JAMES CIRAMI,

Defendants.

-----X

RELEVANT DOCKET ENTRIES

Date	Proceedings
Apr. 25-73	Before Bartels, J. - Indictment filed.
Dec. 3-73	Before Costantino, J. - Case called. Defts. and atty Mr. Hollman present - Jurors selected and sworn - trial ordered and BEGUN. Trial continued to Dec. 4, 1973.
Dec. 4-73	Before Costantino, J. - Case called - Defts. and counsel present - Trial resumed. Trial cont'd to 12-5-73 at 10:00 A.M.
Dec. 5-73	Before Costantino, J. - Case called - defts. and attys present - trial resumed - Motion to dismiss argued and denied - motion to dismiss count 16 - granted motion to dismiss counts 18 and 19 - Decision Reserved - motion to dismiss as to deft James Cirami - Decision Reserved - trial continued to Dec. 6, 1973.
Dec. 6-73	Before Costantino, J. - Case called - Defts and atty present - Trial resumed - Motion to dismiss counts 18 and 19 denied-Motion to dismiss as to deft James Cirami denied with leave to renew-Defts rests-Motion renewed to dismiss as to deft James Cirami-Motion denied-Trial cont'd to 12/7/73.

RELEVANT DOCKET ENTRIES

Date	Proceedings
Dec. 7-73	Govt's request to charge filed. Before Costantino, Jr. - Case called - Defts and counsel present - Trial resumed. Both sides rest- Deft moves to dismiss the indictment- Motion denied. Order of sustenance signed - Jury retires to deliberate - Jury returns and finds both defts. guilty on counts 1 to 15 and 17 and 18 and 19- Jury polled - Trial concluded Jury discharged.
Dec. 7-73	By Costantino, J. - Order of sustenance filed.
Dec. 11-73	2 Stenographers transcript dated Dec. 3, 1973 and Dec. 4, 1973 respectively.
Jan. 18-74	Stenographer transcript dated 12-7-73 filed.
Jan. 29-74	2 Stenographers transcripts filed dated Dec. 5, 1973 & Dec. 6, 1973 (pgs 133 to 352)
Mar. 22-74	Judgment and Order of Probation filed. (James Cirami)
Mar. 22-74	Judgment and Order of Probation filed. (Salvatore Cirami)

INDICTMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

SALVATORE CIRAMI
JAMES CIRAMI

FILED
IN CLERK'S OFFICE
J. S. DISTRICT COURT E.D. N.Y.

★ APR 25 1973 ★

INDICTMENT

26 U.S.C. 7201

18 U.S.C. 2

26 U.S.C. 7206(2)

Defendants TIME A.M.
P.M.

73 CR 413

THE GRAND JURY CHARGES:

COUNT ONE

That during the period from January 1, 1967 to July 31, 1971, inclusive in the Eastern District of New York, the defendants Salvatore Cirami and James Cirami who were the President and Treasurer and Vice President and Secretary respectively of Air Package Distribution Service Ltd., a corporation, with its principal place of business in Queens County, New York, did wilfully attempt to evade and defeat a large part of the federal income taxes withheld from wages and Federal Insurance Contributions Act taxes due and owing to the United States of America for the quarter ending March 31, 1967, by preparing and causing to be prepared and thereafter filing and causing to be filed with the Internal Revenue Service Center, Andover, Massachusetts, a false and fraudulent employer's quarterly tax return, wherein it was stated that the total taxable wages paid employees for the said quarter was the sum of \$13,320.82 and that the total amount of tax withheld and Federal Insurance Contributions Act taxes due thereon was the sum of \$1,172.23, whereas, as the defendants then and there well knew, the total taxable wages paid employees for said quarter was the sum of \$39,401.82 upon which wages the defendants owed to the United States of America federal income taxes withheld from wages and Federal Insurance Contributions Act taxes due in the total amount of \$3,467.36.

In violation of Section 7201, Internal Revenue Code; 26 United States Code, Section 7201; 18 United States Code, Section 2.

COUNT TWO

The allegations in Count I hereof are repeated and realleged for counts two through fourteen of this indictment as though fully set forth therein:

INDICTMENT

COUNT	QUARTER ENDED	DUE DATE	REPORTED WAGES	REPORTED FICA	ACTUAL WAGES	ACTUAL FICA TAX DUE
2	6/30/67	7/31/67	7,134.78	627.86	33,096.03	2,912.45
3	9/30/67	10/31/67	11,372.00	1,000.74	30,836.85	2,713.64
4	12/31/67	1/31/68	9,483.53	834.33	25,329.53	2,229.00
5	3/31/68	4/30/68	15,813.66	1,391.60	36,747.66	3,233.79
6	6/30/68	7/31/68	9,916.01	872.60	33,524.01	2,950.11
7	9/30/68	10/31/68	5,085.00	440.60	33,318.00	2,913.98
8	12/31/68	1/31/69	5,460.00	480.48	30,412.80	2,676.33
9	3/31/69	4/30/69	9,360.00	898.56	37,295.25	3,580.34
10	6/30/69	7/31/69	13,104.35	1,258.02	39,809.35	3,821.79
11	9/30/69	10/31/69	6,210.00	596.74	31,876.00	3,060.10
12	12/31/69	1/31/70	6,095.00	585.12	28,372.00	2,721.71
13	3/31/70	4/30/70	7,210.00	692.16	29,213.50	2,804.50
14	6/30/70	7/31/70	6,580.00	631.68	28,603.85	2,745.97

In violation of Section 7201, Internal Revenue Code; 26 United States Code, Section 7201; 18 United States Code, Section 2.

COUNT FIFTEEN

On or about the 31st day of January 1968, in the Eastern District of New York, the defendants Salvatore Cirami and James Cirami who were the President, Treasurer and Vice President, Secretary respectively of Air Package Distribution Service Ltd., a corporation with its principal place of business in the Eastern District of New York, did wilfully attempt to evade and defeat a large part of the Employees Annual Federal Unemployment Tax due and owing the United States of America for the year ending December 31, 1967, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, at Brooklyn, New York, a false and fraudulent Employers Annual Unemployment Tax (Form 940), wherein it was stated that the total wages subject to Federal Unemployment taxes were \$26,218.00, and that the total amount of tax paid was \$812.76, whereas, as they then and there well knew, the actual wages subject to Federal Unemployment tax were \$87,359.10 upon which wages they owed to the United States of America Unemployment Taxes in the amount of \$2,708.13.

In violation of Section 7201, Internal Revenue Code; 26 United States Code, Section 7201; 18 United States Code, Section 2.

INDICTMENT

COUNT SIXTEEN

On or about the 31st day of January 1969, in the Eastern District of New York the defendants Salvatore Cirami and James Cirami, who were the President, Treasurer and Vice President, Secretary respectively of Air Package Distribution Service Ltd., a corporation with its principal place of business in the Eastern District of New York, did wilfully attempt to evade and defeat a large part of the Employers Annual Federal Unemployment Tax for the year ending December 31, 1968, by failing to file with the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, at Brooklyn, New York, the required Employers Annual Federal Unemployment Tax (Form 940), whereas, as they then and there well knew, they had paid wages subject to Federal Unemployment of \$60,348.80 upon which wages they owed to the United States of America Unemployment Taxes in the amount of \$1,870.81.

In violation of Section 7201, Internal Revenue Code; 26 United States Code, Section 7201; 18 United States Code, Section 2.

COUNT SEVENTEEN

On or about the 31st day of January 1970, in the Eastern District of New York the defendants Salvatore Cirami and James Cirami, who were the President, Treasurer and Vice President, Secretary respectively of Air Package Distribution Service Ltd., a corporation with its principal place of business in the Eastern District of New York, did wilfully attempt to evade and defeat a large part of the Employers Annual Federal Unemployment Tax for the year ending December 31, 1969, by preparing and causing to be prepared and thereafter filing and causing to be filed with the Internal Revenue Service Center, Andover, Massachusetts, a false and fraudulent Employer's Annual Federal Unemployment Tax (Form 940), wherein it was stated that the total wages subject to Federal Unemployment Taxes were \$21,295.43 and that the total amount of tax paid was \$660.16, whereas, as they then and there well knew, the actual wages subject to Federal Unemployment Tax were \$86,547.68, upon which wages they owed to the United States of America Unemployment Taxes in the amount of \$2,682.97.

In violation of Section 7201, Internal Revenue Code; 26 United States Code, Section 7201; 18 United States Code, Section 2.

INDICTMENT

COUNT EIGHTEEN

That on or about the 15th day of February 1969, in the Eastern District of New York the defendants Salvatore Cirami and James Cirami who were President, Secretary and Vice President, Treasurer respectively of Air Package Distribution Service Ltd., a corporation with its principal place of business in the Eastern District of New York, did wilfully and knowingly aid and assist in, and counsel, procure, and advise the preparation, and presentation to the Internal Revenue Service Center, Andover, Massachusetts in excess of 50 United States Information Returns (Form 1099) for the calendar year 1968, which were false and fraudulent as to a material matter, in that they represented the recipient's of payment from the corporation as independent contractors whereas, as the said defendants then and there well knew and believed these payments were in actuality wages tendered to corporate employees which should have been reported by issuance of a Wage and Tax Statement (Form W-2) (a W-2 form reporting wages earned).

In violation of Section 7206(2), Internal Revenue Code; 26 United States Code, Section 7206(2).

COUNT NINETEEN

That on or about the 15th day of February 1970, in the Eastern District of New York, the defendants Salvatore Cirami and James Cirami who were President, Secretary and Vice President, Treasurer respectively of Air Package Distribution Service Ltd., a corporation with its principal place of business in the Eastern District of New York, did wilfully and knowingly aid and assist in, and counsel, and procure, and advise the preparation, and presentation to the Internal Revenue Service Center, Andover, Massachusetts in excess of 30 United States Information Returns (Form 1099) for the calendar year 1969, which were false and fraudulent as to a material matter, in that they represented the recipient's of payment from the corporation as independent contractors, whereas, as the said defendants then and there well knew and believed these payments were in actuality wages tendered to corporate employees which should have been reported by issuance of a Wage and Tax Statement (Form W-2).

In violation of Section 7206(2), Internal Revenue Code; 26 United States Code, Section 7206(2).

A TRUE BILL

FOREMAN

Robert A. Morse
ROBERT A. MORSE
United States Attorney

EXCERPTS FROM TRANSCRIPT.

Strahl - direct

At this time, your Honor, I'd like to call
Mr. Strahl.

Step up to the front, please.

THE CLERK: Stand right here, sir, and
raise your right hand.

I R W I N S T R A H L, having first been duly sworn
by the clerk of the Court, took the witness stand
and testified as follows:

THE CLERK: State your name for the record
and spell it, please.

THE WITNESS: Irwin Strahl, S-t-r-a-h-l.

THE COURT: All right, take the witness
stand, please.

* * *

2

3 Q What kind of job were you looking for?

4 A A driving job, driving a truck.

5 Q Who hired you?

6 A I believe it was Sal Cirami.

7 Q Did you discuss at that time what would be the
8 terms and conditions of your working for them?

9 A Yes.

10 Q What was told to you at that time?

11 A That it would be a more or less a sub-contracting job.
12 No deductions would be held out of my salary.

13 Q Would you have social security paid for or
14 unemployment?

15 A To my knowledge, no.

16 Q Could you tell us the terms of your employment
17 such as how many days you were supposed to work, what you
18 were supposed to do, what did your job entail?

19 A Well, it was a five-day-a-week job, most of the time,
20 although I did work certain Saturdays, I believe.

21 It was delivering and picking up freight from New York
22 City or Brooklyn. Most of the time I did Brooklyn.

23 Q How did you know what to do every particular
24 day?

25 A Well, there was also somebody on the docks -- you know

Strahl - direct

like one or two of the other men would show you what work
you had to do that day but when I had a steady run, when
I did Brooklyn, I knew where to go for the packages, what
to do, where to look for the freight.

* * *

Strahl - direct

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2 A That the truck is being leased to us. That is part
3 of the subcontracting deal.

4 Q So you were told that a truck was going to
5 be leased to you.

6 Where did you obtain this truck from?

7 A Well, the truck was always at our terminal.

8 Q Which terminal is that; the Ciramis' place?

9 A Yes. I never had to go any place to pick up a truck.

10 Q Who assigned the truck to you? How did you
11 know which truck was yours?

12 A Either Sal or his son Jimmy or the dispatcher, Sammy,
13 somebody there would assign a truck to me.

14 Q Was it always the same truck?

15 A Usually, yes.

16 Q When you say "usually," there were instances
17 where it was not the same truck either because it was being
18 repaired or for whatever reason?

19 A Right, right.

20 Q You say you leased and there was an agreement.
21 What were the terms and conditions of the lease, do you know
22 them? If you don't know them say so.

23 A I don't know the exact terms, no.

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Q Did you ever see these checks before? Did you ever see the originals before?

A Certain of them on a few different occasions.

Q When did you ever see them before? Did you ever see them while working for the defendant?

A Yes.

Q Did you ever authorize anyone to sign that endorsement on the back for you?

A Not directly but all the drivers knew that they were being signed, or at least I knew.

* * *

7

MR. MYERSON: The Government calls

Mr. Lynch.

THE CLERK: Stop right there, please.

Raise your right hand.

J A M E S L Y N C H , having been first duly sworn

by the Clerk of the Court, was examined and

testified as follows:

THE CLERK: State your name, please, sir.

13a
Lynch

65
28

THE WITNESS: James Lynch, L-y-n-c-h.

THE COURT: Take the stand, please.

* * *

10

Q Who hired you?

A The day I went for the job James Cirami was there. He spoke to me briefly and there was another fellow, I believe, who was the dispatcher who hired me.

Q What did you discuss with Mr. James Cirami?

A Wages.

Q Could you tell us the nature of it and what were the terms and conditions of your employment supposed to be?

A I was told I would be more or less self-employed. I would be responsible for taxes and Social Security and a health plan and that was about it.

Q That was it?

A To the best of my knowledge, now.

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CROSS-EXAMINATION

15

BY MR. HOLLMAN:

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Q Now, Mr. Lynch, getting back to the first time
you met James Cirami, he advised you of certain things in
connection with your services to be rendered to Air Packaging?

20

21

A Right.

22

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Q He told you basically you would be self-
employed?

A Right.

Q That no withholding taxes would be taken out
of your amount that you received?

1 14

2 A Right.

3 Q And in fact, were the checks that you were just
4 now shown, Exhibit 6, you received from Air Packaging that
5 money you agreed to accept; am I right?

6 In other words, Mr. Cirami indicated you would receive
7 a certain amount per week?

8 A Yes.

9 Q And you received that money?

10 A Yes.

11 Q And that is represented by those checks that
12 are here?

13 A Not \$400.

14 Q I know that. I will get to that.

15 You got all the money from Mr. Cirami that he said you
16 would get per your agreement?

17 A I didn't look at those checks.

18 Q Well, take a look.

19 A (Examining checks) That looks about right.

20 Q So you got all the money due to you per your
21 arrangement with Mr. Cirami?

22 A Yes.

23 Q The truck rental of \$400, you personally were
24 not entitled to receive?

25 A Evidently not. I was never told I was.

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17a

MR. MYERSON: The government calls

Billy Anderson.

THE CLERK: Right here, sir.

B I L L Y A N D E R S O N , having first been
duly sworn by the Clerk of the Court took the
witness stand and testified as follows:

THE CLERK: State your name and spell it,
please.

THE WITNESS: Billy, B-i-l-l-y, Anderson,
A-n-d-e-r-s-o-n.

* * *

1 5
2 Q The question is, did you complain about it. Do
3 you remember that now from reading this?

4 A Well, I didn't complain. I asked him what was the
5 setup and he explained to me exactly. He explained to me
6 the setup. I think he used the term "an independent contractor."

7 Q Could you tell us what your job entailed, how
8 you proceeded each day, how you knew where to pick up things,
9 how you knew what to do each day?

10 A At the beginning of each day you come in and route
11 your deliveries. I had basically a certain area to cover,
12 the borough of Queens.

13 I would come in, route my deliveries according to how
14 I wanted to make them and during the course of the day, if
15 there were any pick-ups to be made, I would integrate them
16 into my route.

17 At the end of the day I would call and they would tell
18 me to come in and I would come in with the freight from the
19 various airlines that I picked it up for.

20 Q This was all told to you by the dispatcher?

21 A Yes.

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MR. MYERSON The government calls Paul
Fleischer.

THE CLERK: Right here, sir.

P A U L F L E I S C H E R , having first been
duly sworn by the Clerk of the Court took the
witness stand and testified as follows:

THE CLERK: State your name and spell it,
please.

THE WITNESS: Paul Fleischer, F-l-e-i-s-c-h-e-r.

* * *

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6 Q And what kind of job were you looking for?

7 A Driving.

8 Q Who hired you?

9 A Sal.

10 Q What did Salvatore Cirami tell you as to what
11 the job would be and the terms and conditions of the job?

12 A You would be an owner operator.

13 Q And what else did he say at that time?

14 A That you would be an owner operator and have to pay
15 your own taxes on the truck -- taxes.

16 Q Did he tell you what the job would be like or
17 anything else of that type?

18 A We would be picking up cargo.

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Q Excuse me?

A I was told before time what the contract stipulations were; that I was an owner operator and you have to pay your own taxes.

Q So you never really read this?

A What?

Q The contract?

A I glanced over it.

Q You glanced over it. Okay.

Can you tell us the provisions of this contract?

A That you would have to pay your own taxes.

Q What else?

A Your own social security.

Q What else?

A The truck rental.

Q What about the truck rental?

A That you would have to pay it.

Q I don't understand that. Would you explain what you mean by that?

A Like you would have to pay the truck rental.

Q Truck rental from what? Where did you get the truck and what did you do with it?

1
2 A I got the truck from Jay Truck Rental.

3 Q How did you get the truck from Jay Truck Rental?

4 A I don't understand. The truck was in a garage.

5 Q Did you go to someone and say "I want to lease
6 a truck"?

7 A No. When I got the job Air Freight Haulage supplied
8 the truck.

9 Q They supplied the truck?

10 A Yes, Jay Truck Rental.

11 Q Which is it?

12 A Excuse me?

13 Q Who supplied the truck? You just said Air
14 Freight Haulage and then you said Jay Trucking in the same
15 sentence. Do you know which company supplied the truck?

16 A Jay Truck Rental .

17 Q Who did you speak to about that? What kind of
18 an agreement did you make with Jay Trucking in order to get
19 the truck and what were you going to use it for? Tell us
20 the terms and conditions of that contract.

21 MR. HOLLMAN: Assuming all these things
22 were in existence, I think you should ask him,
23 simply, what happened.

24 MR. MYERSON: That's what I am asking.
25 Perhaps I am phrasing it poorly.

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Q What did happen?

A I just know I went to work in the morning, got a truck in the morning and it was the same truck all the time.

Q I am asking how did you get the truck? Under what conditions did you own the truck? If you leased it, tell us and if so, for how long and how much did you pay?

A From the contract I was leasing from Jay Truck Rental.

* * *

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4 Are you aware that those costs for insurance
5 were borne out of that rental check?

6 A Right.

7 Q Now, that means there is another agreement, a
8 truck rental agreement. Are you familiar with that?

9 A Right.

10 MR. HOLLMAN: I guess we will have it
11 marked as defendant's exhibit A.

12 THE CLERK: Document marked for identi-
13 fication as defendant's exhibit A.

14 (So marked.)

15 MR. HOLLMAN: I'd like to offer that in
16 evidence.

17 MR. MYERSON: He has to identify it and
18 say what it is.

19 MR. HOLLMAN: That's what you want to do
20 with all the documents?

21 MR. MYERSON: Okay. It is in evidence.

22 THE CLERK: So marked.

23 Q I show you defendant's exhibit A and will you
24 tell me what that represents?

25 A This is the truck rental.

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Q With regard to the service rendered by you to Mr. Cirami you were advised of what the services were by Mr. Cirami when you first came to perform services for him; correct?

A Right.

Q And he also advised you that you were an independent contractor?

A Right.

Q That there is a leasing of a truck situation involved in this service to be rendered?

A Right.

Q If you were to have a truck -- let me ask you this: Did Mr. Cirami ask you if you had a truck?

A I don't recall. I don't think so.

Q If you had a truck --

MR. MYERSON: He said he didn't have it.

I don't want suppositions.

Q So also involved in this was the leasing of a truck?

A Right.

Q And with that there was a truck rental agreement which you have in front of you now?

A Right.

Q And also the truckers' agreement which you

1
2 indicated to us before that the provisions of that were ex-
3 plained to you?

4 A Right.

5 Q And you signed them?

6 A Yes.

7 Q And you were also advised by Mr. Cirami that
8 under this arrangement there would be no withholding taxes
9 taken out and you had the responsibility to pay your own
10 taxes?

11 A Right.

12 Q Did you agree to accept those conditions of
13 service?

14 A Yes.

15 Q Did you perform thereafter for Mr. Cirami?

16 A Yes.

17 Q Now, did you also have the opportunity on
18 occasion, to do any outside work with that truck?

19 A Yes.

20 Q And did you charge those persons that you per-
21 formed outside services for, independently of Mr. Cirami --

22 A I did it for myself.

23 Q You took the truck?

24 A Yes, I took the truck. I moved a few times with it.

25 Q Did you take the truck home on a few occasions?

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A No.

Q But you took it for your own purposes on occasion?

A Yes.

Q With regard to the checks you received -- you received I gather, two checks for each week or each month from the Cirami's?

A I think it was a month.

Q And one check was for your services and that was called cartage?

A Right.

Q And another check was issued for truck rental?

A Right.

Q The cartage checks you advised the bookkeeper she could endorse and cash for you?

A Right.

Q The truck rental check, we described before, went from Air Packaging to your account and onto Jay Rental?

A Right.

Q You understood that?

A Right.

Q And you didn't consider that truck rental money was due to you personally, did you?

A No.

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Fleischer-redirect.

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Q In other words, do you know what the conditions are of the recent agreement?

4

A I would pay for the truck.

5

Q What was that?

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A That I would pay for the truck.

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Q What do you mean you would pay for the truck?

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A In other words -- let me get my breath -- when I took the job I was told I had to pay my own taxes.

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Q You were told that?

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A Yes, I had to pay my own taxes and the truck would be leased from Jay Truck Rental.

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29a
Liebman - direct

MR. MYERSON: The Government calls Cheryl Liebman.

THE CLERK: Raise your right hand, please.

C H E R Y L L I E B M A N, having first been duly sworn by the clerk of the court, took the witness stand and testified as follows:

THE CLERK: State your name and spell it, please.

THE WITNESS: Cheryl Liebman, L-i-e-b-m-a-n.

DIRECT EXAMINATION

BY MR. MYERSON:

Q Do you know Messrs. James and Salvatore Cirami?

A Yes, I do.

Q Did you ever work for them?

A Yes, I did.

Q What did you do for them?

A I did a lot of the bookkeeping and customer service.

Q For the bookkeeping, what books was it that you took care of?

A The ledgers, payroll books, check books.

Q Of which corporation?

A Air Packaging and Jay.

Q And they were both in the same office; correct?

A Yes.

30a
Liebman - direct

- 1
- 2 Q Is there any separate office for Jay Trucking?
- 3 A I think there is one out on the Island.
- 4 Q For Air Packaging, Air Packaging had a lot of
- 5 truckers working for them; is that correct?
- 6 A Yes.
- 7 Q Could you tell us the bookkeeping procedures
- 8 you used with regard to the truckers; how they were classi-
- 9 fied?
- 10 A As owner-operators.
- 11 Q What forms did you keep on that?
- 12 A What forms did I keep?
- 13 Q Yes.
- 14 A You mean --
- 15 Q First, who told you to classify them as owner-
- 16 operators?
- 17 A To tell you the truth, when I started working there
- 18 I was 18. I didn't classify them as anything.
- 19 Q In other words, one of the officers told you?
- 20 A Whenever it was set up, it was set up.
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31a
Liebman - cross

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Q Now, Mr. Cirami and Air Packaging employed certain accountants?

A Yes.

Q Who were the accountants?

A Louis De Stefano and later, Marty -- I can't remember his last name.

Q Would the name Johnson refresh your recollection?

A Yes, yes.

Q What was Mr. DeStefano's obligations while at Air Packaging?

A I didn't see him that often there. I really don't know.

32a
Liebman - cross

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Q Did he prepare the tax returns, if you know?

A He was supposed to.

Q What types of returns were they?

A I don't know too much about it. He did the preparing.
We made the checks and mailed it away.

Q While issuing these two checks in the form
you described, Mr. De Stefano was the accountant?

A Yes.

Q And then Mr. Johnson became the accountant?

A Yes.

Q Did that procedure change then?

A No.

Q The same two checks were issued, as far as
you recall?

A I think so, yes. I'm not a hundred percent sure. I
left right after.

Q Let's see if I can show you an exhibit to
refresh your recollection --

MR. HOLLMAN: I will withdraw the question.

Q Did Mr. Johnson have the same responsibilities
as Mr. De Stefano did?

A Yes.

* * *

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ARNOLD MILLER, called as a witness,
having been first duly sworn, took the stand and
testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Sir, whom are you employed by?

A The Internal Revenue Service.

Q How long have you been so employed?

A It will be 19 years in February.

Q What position do you now hold?

A I am group manager in the Intelligence Division.

Q What positions have you had with the Internal
Revenue Department?

A Prior to becoming group manager, I was special agent
with the Intelligence Division. Those are the only positions
I've held in IRS.

Q How long were you a special agent?

A Over 16 years.

Q You were group manager for the rest of the
period?

A For the remainder of the period.

Q Can you tell us your duties in the respective
positions?

A Yes, as a special agent I was asked to investigate

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9 Miller-direct
criminal violations involving --

MR. HOLLMAN: Your Honor, alleged criminal violations.

THE COURT: Yes, alleged.

A I was asked to investigate alleged criminal violations of the IRS laws.

Q How many such investigations did you make while you were speical agent?

MR. HOLLMAN: I am going to object to that.
It has no bearing on this case.

THE COURT: Unless it bears on this case.

MR. MEYERSON: I want to qualify him as an expert.

MR. HOLLMAN: I will concede that.

THE COURT: You don't have to qualify him.
He was a special agent.

BY MR. MEYERSON:

Q During the course of your employment, did there come a time when you were assigned to United States versus Salvatore Cirami and James Cirami?

A Yes, there did.

Q During the course of your work in this case, did you have occasion to inspect the books and records of the Ciramis and their related corporations?

10

Miller-direct

A I inspected the books and records of their corporations, yes.

Q Which corporations were those?

A Air Package Distribution Service, Ltd. and J. Truck Rental, Inc., I believe.

Q Air Package is a successor to another corporation, isn't it?

A I believe they operated under the corporate entity Air Freight Haulage, Inc.

Q And for what period of time did this investigation cover?

A The investigation covered the period January 1, 1967 through June 30, 1970.

Q Would you describe what records you inspected?

A I examined or inspected the cash journals, the general ledgers and the payroll records, the canceled checks, correspondence in the office, forms 1099, employees' exemptions, payroll cards, the plant itself.

MR. MEYERSON: Ladies and gentlemen of the Jury:

The payroll book and the particular forms are all admitted in evidence and they can be inspected.

Q You made certain computations and prepared

1 11
2 certain schedules in this case?

3 A Yes, sir, I did.

4 Q Can you tell us the findings of these computa-
5 tions and schedules with relationship to the Federal Insur-
6 ance Contributions Act and the employees' annual federal
7 unemployment tax, as well as the 1099 that were submitted
8 from the period of '67 to '70?

9 A My investigation disclosed that for the period January
10 1st of '67 through June 30, 1970, the employers filed quar-
11 terly tax returns and that these returns failed to include
12 any payroll or taxes attributable to the truck drivers of
13 these corporations.

14 I further found --

15 MR. HOLLMAN: Your Honor, I object to any
16 further conclusions. That is as far as he can go.

17 THE COURT: Sustained.

18 The mere statement of what he found is not
19 sufficient. That is an all-encompassing statement
20 which he is giving and narrative is not allowed.
21 He is not allowed to give narrative testimony.

22 Q On what factors did you base your determination
23 of these liabilities?

24 A Based upon the cash books, the payroll records and the
25 canceled checks, I found payments to the truck drivers which

37a

Miller-direct

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were not reported, the tax on these, and the payroll was not reflected on these payroll tax returns filed by this corporation, Air Package Distribution Service, Limited.

Q On what factors did you base this determination that they should have been included?

MR. HOLLMAN: I will object to that.

THE COURT: Sustained.

MR. MEYERSON: May I approach the bench?

THE COURT: That is what we are trying, whether this was a violation, not whether he says there was a violation. We wouldn't need the jury and myself if that were the case, Mr. Meyerson.

Q Can you give us the computation that you have found?

A Yes, I can and I will.

For the quarter ended March 31, 1967, the payroll tax return, the reported taxable wages was \$13,320.82, on which a tax, the FIC, a tax of \$1,172.23 was paid, the actual wages --

MR. HOLLMAN: I object to the word "actual."

That is an interpretation.

THE COURT: Yes, that is an interpretation.

A It was determined that the wages should have been \$39,401 --

MR. HOLLMAN: I think it should be said that

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13 38a
Miller-direct

this is his computati

THE COURT: Your computation.

A My computation determined that the wages were \$39,401.82--

THE COURT: Just one moment.

FIC, that stands for the Federal Insurance
Contributions Act, and no one ever said that, but
that is what it means.

I am sorry. We will have to recess for maybe
ten minutes. We are swearing in an Acting United
States Attorney this morning at 11:00 o'clock and
I must be up in the Chief Judge's chambers.

(A recess was taken in the case.)

* * *

[The jury then took its place in the jury box.)

MR. MEYERSON: Your Honor, at this time I offer Government's Exhibit 19, which is a whole list of people who have filled out employees' withholding exemption certificates.

The defendants' attorney and I, Mr. Hollman, have stipulated that if he would have continued his examination, he would have said that he determined that the figures, the amounts listed in the

Indictment, are the figures that he would have come to; that there was a tax liability; and that the reason for that is that all truckers were classified as independent contractors and the IRS believes that they should be classified as employees.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. HOLLMAN:

Q Mr. Miller, you were the case agent on this matter?

A Yes, sir, I was.

Q How many years were you on this case?

A I would think about a year.

Q And during the course of your employment as a special agent, you were familiar with the rules and regulations of the IRS?

A Yes.

Q Continuing as to the question of liability for, say, the withholding taxes that were not withheld, I gather that the truckers here were paid by the corporation, Air Package?

A Yes.

Q And am I right in saying the corporation, Air

29

Miller-cross

Package, had the responsibility to withhold?

A Yes.

Q And should Air Package not withhold taxes, it would then be the policy of the IRS to give notice to that corporation to withhold; am I correct?

A If the Government knew that the employer was required to withhold and was aware of it they would give notice.

Q Well, you went over these books and records from '67 to '70, is that right?

A That is correct.

Q You have indicated that you as the Government were aware of what Air Package was doing?

A My investigation so determined.

Q My question to you is: Pursuant to the rules and regulations of the IRS, did you give notice to Air Package to withhold taxes?

A It was a criminal matter, a criminal investigation --

THE COURT: Just answer me, did you give notice to the corporation?

THE WITNESS: No.

Q Are you aware that there are forms that are filed with corporations stating that they should withhold and if they fail to withhold the IRS may levy on their property and assets?

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A Yes.

Q And such a notice was not given to Air Package
in this case?

A No.

Q The form is along these lines, it is from the
District Director of the IRS:

"Sir:

"You have not paid over to the United States
at the time and in the manner prescribed by law and
regulation the Internal Revenue taxes required to
be withheld by you from your employees, therefore
pursuant to the provision of Section 31.6011 (a)(5)
of the Employment Tax Regulations, under the
Internal Revenue Code 1954, you are hereby noti-
fied that effective for the month of" -- and there
is the particular month -- "and each succeeding
month you are required to file.

"Your monthly returns must be filed no
later than the 15th of the month."

And it speaks of a federal tax deposit must
be paid under the requirement shown under Section 941.

"Your cooperation is solicited and we
would appreciate it, however your failure to comply
with these requirements will result in immediate
enforcement action including seizure and sale of

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your assets and property if necessary by the Internal Revenue Service."

Is that the type of form normally sent out?

A That is the type of form which would be used where the employer has enunciated the fact that he has employees and has yet failed to collect the taxes.

THE COURT: Well, you mean if the employer would take a position that they were not employees, you would not bother to go after him to get the withholding taxes?

A No, I would have to make an investigation to make that determination.

Q You would send notice to him under the normal circumstances?

A I tried to answer that question before, Mr. Hollman.

Q Let me go back a little, then:

You are aware that from 1963 to about 1966 there was an audit made of Air Package or Air Freight Haulage, the predecessor corporation of the Ciramis'?

A Yes.

Q You are also aware that the audit was closed with an assessment against Mr. Ciramis?

A A considerable assessment.

Q In the amount of about \$200,000?

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A \$200,000.

Q Is that correct?

A That sounds somewhat like the figure I had thought.

Q Are you also aware, if you were aware of that figure, that no notice was sent in '66 to Air Freight Haulage at that point to withhold taxes?

A Yes, I know that.

Q So that the Government, to wit, Internal Revenue Agent -- I think his name was Holland --

A I don't know.

Q That an Internal Revenue agent went over the books and records of Air Freight Haulage and Ciramí also and did not file any notice with Air Freight Haulage that withholding taxes had to be withheld?

A They did not do that, no.

Q Well, am I correct in saying the Ciramís from '66 on, having completed that audit by the IRS, were not notified pursuant to this regulation that I read to you of the fact that they should withhold taxes?

A They were not notified because the government was not aware of the situation.

Q Well, you told me you were aware of the audit and that they went over the Air Freight Haulage records; is that right?

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A Yes, sir.

Q Those Air Freight Haulage records are similar to the ones in evidence here?

A I would assume so.

Q They carried cartage and truck rentals?

A I would so assume.

Q Are you telling me that an Internal Revenue Service agent seeing the same type of records and the 1099s for truckers, are you telling me that you were not put on notice that this was an independent type contractor-type operation?

A The only way I can answer that is to say, looking at those books and records as the Internal Revenue agent did, and not going any further than that, I would not have been put on notice myself.

Q Form 1099 filed by Mr. Berkowsky, what does that mean to you as a Revenue agent?

A That would indicate to me that the individual was an independent truck driver.

Q Then Mr. Berkowsky, who was with Air Freight Haulage, was an independent contractor; is that correct?

A With that on the 1099, that would be an indication of it, if I had not gone beyond that.

Q Well, that Revenue agent who made up the audit

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and came up with \$200,000 assessment, he knew from the 1099 filed that this was an independent contractor situation?

A No, he did not know that; he did not know what it was. He may have assumed; that was one indicia of an independent relationship.

Q And you are telling me, knowing that, along with knowing what is in these books and records of truck rentals, the cartage and the checks being issued for the cartage, the truck rentals, as well as the appraisals had on here, that there were truck rentals involved, he was not fully aware of the independent contractor type of operation that Air Freight Haulage was continuing; are you telling me that?

A I am telling you, number one, that it was not an independent contractor relationship; so, obviously, he could not have been aware of it. It was an employee-employer relationship but his audit did not disclose those facts to him, and that is what I'm telling you, Mr. Hollman.

Q He had access to the records you had three years later?

A Not so, sir.

Q He had the 1099s?

A He had the 1099s, I presume.

Q He had access to all the checks?

Miller-cross

1 35

2 A He had access to the checks.

3 Q He had access to all the books and records?

4 A He had access to the books and records.

5 Q With all those things in evidence, is it not
6 fair to state that he, that the Revenue agent was on notice
7 as to what type of operation Air Freight Haulage was continu-
8 ing at that time?

9 A No, sir, he was not.

10 Q He must be a very stupid agent.

11 A No, sir, he was not a stupid agent.

12 Q Let me ask you this at this point in time:

13 Were any Revenue agents picking up the 1099s
14 filed in '62, '63, '64, '65 and '66 for all these people in
15 which two checks are issued, one for truck rentals and one
16 for cartage, what would any Revenue agent say as to who these
17 people are who are filing these types of forms?

18 A From the information you have outlined to me there
19 might be an appearance of a contractual relationship between
20 these parties.

21 Q And he would also be aware, the Revenue agent,
22 of what the taxes were being paid by Air Freight Haulage and
23 the Ciramis?

24 A There is no question about that.

25 Q That is what happened here, he got assessed

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here, am I right?

A They were assessed.

Q So that the Revenue agent knew precisely what the taxes were which were being paid at that particular time?

A They did.

Q He knew what was being withheld?

A He knew what was being withheld.

Q He knew what was happening with Social Security?

A He knew what was being paid to Social Security.

Q And he never put Air Freight Haulage or the Ciramis on notice that pursuant to what I read you here, from now on all Social Security taxes have to be sent to the government or we are going to levy on your property and assets; he never did that?

A I cannot -- yes, he never did that.

Q So here then we have the Ciramis in 1966 getting done with an audit and the IRS at that point never advised Air Freight Haulage or the Ciramis that, which I will read to you again, that they must withhold and that if they don't do that, they are subject to immediate enforcement action, immediate enforcement action would be taken; that you admit was never done?

A Yes, I admit that was never done.

Q There is a count in this indictment which is a

49a
Miller-cross

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2 nonfiling count.

3 Are you familiar with that?

4 A You are speaking of the tax for the year 1968?

5 Q The so-called nonfiling tax; you are familiar
6 with that?

7 A Yes.

8 Q What does that count represent to the Bureau?

9 A That there was no return filed for that year, it was
10 an annual return that should have been filed.

11 Q I believe you made a recommendation in your
12 report that there should not be any charge in the indictment
13 on this count because you did not find anything of a willful
14 nature; is that right?

15 A My report so reflected.

16 Q So you recommended with regard to Count 16 that
17 you found no willfulness, and that there should not be any
18 charge against the Ciramis with regard to that?

19 A Yes.

20 Q You are right in that recommendation and I will
21 go over why you are --

22 MR. MEYERSON: These remarks are really
23 uncalled for.

24 MR. HOLLMAN: I withdraw that.

25 THE COURT: They are gratuitous remarks.

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MR. HOLLMAN: I should not do that.

THE COURT: I think you are right.

BY MR. HOLLMAN:

Q What we have of Air Freight Haulage and Air Package Distribution then is the many, many tax returns which were filed here; am I correct -- all the quarterly returns were filed?

A All the quarterly returns were filed.

Q And the quarterly returns were filed, as far as you know, after preparation by an accountant for Air Package; am I right?

A Yes, I would assume so.

Q The 1099s were all filed with the Federal Government; am I right?

A Yes.

Q And I believe the 940, that was not filed for '68, in fact it was filed for 1967, it was filed for '69, it was filed for '70; am I right?

A Yes -- no, I don't know. I'm sorry because our period ended June 30th, '70; I did not know at that time.

Q It was filed for '66, '67 and '69?

A '66 was not in issue, '67 -- '67 and '69.

Q '67 and '69 were filed, '68 we have a nonfiling charge; am I right? That is in relation to what we call --

51a
Miller-cross

- 1 39
- 2 A No, I must correct you, sir.
- 3 For '68 the charge is not nonfiling, it is evasion.
- 4 Q Count 16? It is right in front of you.
- 5 A May I refresh my recollection?
- 6 Q Count 16.
- 7 A Yes. We are charging him for that reason with a will-
- 8 ful attempt to deceive, it was not filed.
- 9 Q That is the same count you made a recommendation
- 10 not to charge Ciramis with that?
- 11 A That is correct.
- 12 Q Your recommendation was -- and that is the
- 13 count I am talking about -- and with regard to that count, we
- 14 will go over it again, you did find Air Package filed for '67
- 15 and '69?
- 16 A Yes.
- 17 Q You were aware accountants prepared the returns
- 18 that were filed with the IRS?
- 19 A Yes.
- 20 Q You also found, I gather, that there were 941s
- 21 filed?
- 22 A From January 1967 to June 30, 1970.
- 23 Q Those are the quarterly returns filed?
- 24 A That is correct.
- 25 Q This is the yearly returns, the 940?

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2 A Yes.

3 Q How does the 941 relate to the 940, would you
4 explain that?

5 A Basically the earnings of the employees are determined
6 on an annual basis and the taxes computed on that. This is
7 the old-age benefit tax, that is the Social Security. The
8 tax is credited to the employee and paid to the government
9 on a yearly basis.

10 There are two separate taxes due, one for unemployment
11 tax and one for Social Security tax.

12 Q My point is, is the four quarters on the 941
13 similar to the information that is on the 940?

14 A Yes.

15 Q That is probably what led you to recommend not
16 to file charges?

17 A Absolutely not, sir.

18 Q Then, at any rate, the information that is in
19 the 941 filed is similar to the information compiled on the
20 yearly 940?

21 A It should have been if a return had been filed, yes,
22 sir.

23 Q So at least the Internal Revenue Service, based
24 on the quarterly filings, was familiar with what went on with
25 the year 1968, although they lacked the annual report?

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2 A Yes.

3 Q Let me get to the last issue here, and that is
4 what are we talking about in dollars and cents with regard
5 to Count 16.

6 What does the nonfiling come up to in dollars
7 and cents?

8 A \$1,870.81.

9 Q But is there not a credit that is given to Air
10 Package with regard to payments they made, State of New York
11 payments?

12 A If payments were actually made.

13 Q Did you not determine what payments were made
14 to the State?

15 A I made an attempt to do so, I was unable to find pay-
16 ments.

17 Q Let us put it this way, put it both ways,
18 assuming they did not pay the State, then you have \$1,900?

19 A Liability.

20 Q Assuming they paid the State, what does that
21 reduce it to?

22 Ninety percent would have been credited had they paid
23 the State.

24 Q And as far as you know, at this point, you don't
25 know whether they paid the State or not?

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Miller-cross

A I made an attempt to make that determination.

Q They paid the State for '67, did they not?

A At this point I can't recall; if they had paid the State, they would have gotten credit for it.

Q So in paying the State, then, what you read down here as an \$1200 figure would be reduced by 90 percent?

A If they filed a timely return and paid the State, they would have gotten credit for it.

Q So that we are talking about, assuming they paid the State, about \$180, which is involved in the tax to be paid to the government?

A For the year 1968.

Q Yes, sir.

A If they had filed a State return timely and made the payments, they would have gotten credit for 90 percent of that.

Q So that what we are talking about is the failure to file that return, assuming we paid the State?

A No, sir, we are not talking about a failure to report. Our indictment calls for a willful attempt to deceive and evade.

Q By failure to file?

A By virtue of failure to file and omitting two employee truck drivers.

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Miller-cross

Q To wind it up, all I am saying is had the form been filed, it would have amounted to \$180, assuming the State was paid?

A If the State return had been filed, then he would have gotten credit for that, and the thing would have been \$180.

Q You know during the period '67, '68, '69, that Mr. Ciriame's corporations had an accountant, right?

A Yes.

Q And you found it was their responsibility, among other things, to pay the State their unemployment tax; am I right?

A I assume that would be one of the responsibilities of the accountant.

Q In your long years of experience, this is the first such prosecution that you have ever been involved in with regard to this type of federal indictment?

A An employer-employee relationship?

Q Yes.

A No, sir, that is not so.

Q You have had one before this?

A Yes, sir.

Q In your 19 years, is the one similar to this, that is that they had no notice after having been completely audited --

56a
Miller-cross

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MR. MEYERSON: I object.

MR. HOLLMAN: I will withdraw the question,
your Honor.

Q I gather that in the period of time that you
had Air Package, you had access to the books and records?

A Yes.

Q And you had access to the accountants?

A I interviewed the accountants, yes.

Q And in fact the whole case that we have here is
pretty much from records taken from Air Package Corporation?

A No, sir.

Q Well, let us put it this way: All these books
and records are taken from Air Package; aren't they?

A The tax computations were based upon the books and
records, sir.

Q My point is you had access to all the books and
records?

A Yes, sir.

Q I think it would be fair to say that the
accountants and the bookkeeper -- everybody cooperated with
you?

A I don't know of any lack of cooperation on the part of
the accountants or the bookkeeper.

Q Let us get to these 1099s.

57a

Miller-cross

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These 1099s were all filed?

A That is my belief.

Q And under Air Package's point of view these are accurate returns?

A There were some small errors in the computation but by and large they are representative of the payments made to the individuals as cartage payments.

Q We are not saying here that what Air Package did was to file these returns and they were false in the sense that they are not the same as what is in the books and records; we are not talking about a double set of books or records or anything like that?

A No, by and large they tied in with the books and records.

Q These particular forms, the 1099s, accurately reflect what is in the books and records?

A Yes, sir.

Q Had the IRS -- had Air Package gone along and filed W-2's and Internal Revenue Service make a decision that. No, you have got an independent contractor situation, you would have then been in the position to charge them with falsifying the W-2's; am I right?

A Would you repeat the question; it is a little complicated.

Q If a corporation --

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2 MR. NEYERSON: I am going to object. I would
3 object to the question, If other circumstances
4 would happen. Well, there are a lot of "ifs"; if
5 that don't do that and if they do not do that --
6 It is a complete possibility question.

7 MR. HOLLMAN: I will drop that line and go
8 into one thing more.

9 Q During the time that you looked at these books
10 and records, you never found any double sets of books or any-
11 thing of that nature?

12 A No double sets of books.

13 Q You found everything that was reflected in the
14 book to be accurate; what ~~you're~~ upset about is that they did
15 not include the truck drivers, the independent operators,
16 call them what you want, as employees?

17 A I am not upset, Mr. Hollman.

18 Q You testified before the Grand Jury in this
19 matter?

20 A Yes, I did.

21 MR. HOLLMAN: Your Honor, I have no further
22 questions.

23 THE COURT: Do you have any further
24 questions?
25

59a
Miller-redirect

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REDIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Miller, can you tell us when that notice is usually given?

A When the notice is usually given? When a company has employees and recognizes them as employees and fails to make the withholding tax deductions from the individuals.

Q That is not the situation here?

A No, sir, it was not.

MR. HOLLMAN: That was not the situation here?

THE COURT: That is what he said.

BY MR. MEYERSON:

Q And can you just answer in your own words for the jury, why didn't you give this notice?

MR. HOLLMAN: Your Honor --

THE COURT: Sustained.

MR. MEYERSON: That is what Mr. Hollman was trying to bring out.

THE COURT: Maybe, but the question is poor.

BY MR. MEYERSON:

Q Mr. Miller, can you tell us again when that notice is to be given?

A When?

1 48

Miller-redirect

2 Q When the notice is to be given.

3 A If a corporation or an individual recognizes an employee-
4 employer relationship yet fails to pay over the taxes, the
5 notice is given to him.

6 Q And what is the situation in this case?

7 A The employer denied the existence of any employees
8 other than the few office personnel that were listed on the
9 941s and the 940s.10 Q Now, the books and the records, all these books
11 and records indicate that all the truckers were treated as
12 independent contractors; is that right?

13 A That is true.

14 Q So, in other words, -- well, do they indicate
15 what the factors were or determine what made them independent
16 contractors, the books?

17 A The books and records in themselves?

18 Q Yes.

19 A No.

20 Q So, in other words, if an Internal Revenue agent,
21 and Mr. Hollman went into this for certain years, looked at
22 the books and records and he relied on those books and records,
23 relying on those books and records he would come to the
24 conclusion that they were independent contractors; is that
25 correct -- and in order to make any other determination he

61a
Miller-redirect/recross

1 49

2 would have to go further; is that correct?

3 A That is correct.

4 Q There was also a question as to the State tax,
5 so if the tax was paid that would lower one of the amounts.

6 Now, did you try, did you ask for this informa-
7 tion?

8 A I went through the disbursements to see if I could
9 find payments.

10 Q And could you find any?

11 A I found none.

12 Q And these were the books and records that Mr.
13 Cirami opened up to you and said everything is here; is that
14 correct?

15 A Yes.

16 MR. MEYERSON: I have no further questions.

17 RECROSS-EXAMINATION

18 BY MR. HOLLMAN:

19 Q Mr. Miller, are you telling me that notice is
20 only sent where the corporation recognizes an employee-
21 employer relationship and fails to withhold?

22 A The fact is that the government was not put on notice
23 in any way that they had employees.

24 Q That is not my question. My question is, I'm
25 asking you when is the IRS going to send a notice to an

1 50

2 employer when he doesn't withhold taxes?

3 A When it is aware of it, normally they do.

4 Q Who is aware of it?

5 A The government.

6 Q That is --

7 A The government is.

8 Q That is my point. You are telling me after year
9 of examining the books and records and coming up with \$200,000
10 assessment against this man, you tell me that the man was not
11 aware and that these records did not reflect what went on?

12 A That is exactly what I am telling you, Mr. Hollman.

13 Q That is the reason you did not give him notice?

14 A That is the reason; I would not have given him notice
15 in any case.

16 Q Let me read from Section 7512 of the IRS which
17 I am sure you are familiar with and see whether or not this
18 was complied with, this particular section:

19 "General Rule:

20 "Whenever any person who is required to
21 collect and account for and pay for any tax imposed
22 by subtitle c" -- which is unemployment, which is
23 what we are talking about here --

24 A Yes.

25 Q (Continuing) "1: At the time and place
prescribed by law or regulation and fails to

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collect or truthfully account for or pay over
such tax;

"And (b) fails to make timely payments or
returns of such tax;

"And 2, is notified by notice delivered in
hand to such person of any such failure" --

And it goes on, and in the case of a corporation notice is
delivered in hand to an officer, and it goes on:

"shall for purposes of this section be deemed
notice," et cetera.

Now, in fact in '66 these particular taxes were
not being collected and yet no notice was given pursuant to
that section.

MR. MEYERSON: 1966 is not part of this
indictment. That question is completely irrele-
vant.

THE COURT: It is not part of this
indictment.

MR. MEYERSON: Mr. Hollman is a learned
attorney --

MR. HOLLMAN: This man is describing what he
knew and what he did not know.

THE COURT: "What he knew?"

MR. HOLLMAN: What the Cirinis knew at the

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end of the audit in '66 by the IRS, and that is the issue here.

MR. MEYERSON: If the audit failed to disclose something, then it failed to disclose it by looking at the books.

The testimony is clear here, they looked at the books and they relied on them and they did not go further at that time.

Now, that is very clear; Mr. Hollman has been making the same point again and again.

MR. HOLLMAN: That is not my argument.

THE COURT: That is not the argument.

MR. MEYERSON: I don't see the relevancy.

THE COURT: I will allow it.

MR. HOLLMAN: We will argue to the jury.

THE COURT: Don't rule me out.

BY MR. HOLLMAN:

Q At any rate, Section 7512 was never complied with with respect to either Air Freight Haulage or Air Package

A There was no reason to comply with it, Mr. Hollman; the government was receiving taxes. They were under the impression that they were getting their just due. It was only my investigation which determined the unreported payroll attributed to these trucker-drivers and the tax due on that.

1 53

Miller-recross

2 Q Wasn't the assessment levied against the
3 Ciramis dealing with truck rentals and disallowances for trucks
4 and things of that nature connected with the business of Air
5 Freight?

6 A No, sir, it was not. My information is that this was
7 never in issue.

8 Q Right, it was never in issue because the Revenue
9 agents never challenged it?

10 A I don't want to give my opinion, unless you ask me.

11 Q It is true the Revenue agents after going
12 through all these records and pointing out what taxes were
13 paid and what taxes were not paid never challenged the ques-
14 tion whether or not sufficient withholding was being taken
15 out?

16 A The books and records on their face appear to be
17 regular and the Revenue agent doing this examination relied
18 on those records.

19 Q And to wit, never gave any notice that Air
20 Freight Haulage or Air Package was failing to withhold taxes?

21 A That is right.

22 MR. HOLLMAN: No further questions.

23 MR. MEYERSON: No further questions.

24 THE COURT: You may step down. Thank you.

25 (The witness was excused.)

AFTERNOON SESSION

December 5, 1973

3:00 o'clock p.m.

(The jury took its place in the jury box.)

MR. MEYERSON: Your Honor, the Government calls Mrs. Helen Blody.

HELEN BLODY, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mrs. Blody, what is your occupation?

A Right now I guess you would call me a housewife, right now.

Q What was your occupation between '67 and '70?

A I was working for Local 295, Welfare and Pension Fund.

Q What is that Local, Local 295?

A Local 295 is the union that has to do with the air freight workers.

Q Can you tell us your duties there?

A Well, for a period of time I was the office manager of the Welfare and Pension Fund. My duties were to accept remittance forms sent in by the employers who paid us X amount of dollars per week per employee for certain welfare benefits

1 64 Blody - direct

2 and X amount of dollars per week per employee for pension
3 benefits, and for this the various respective employees
4 received welfare and pension benefits.

5 Q So, as I understand it, in order for the
6 truckers to receive these benefits they had to be employees?

7 A They had to be employees.

8 Q Does that go for disability also?

9 A Yes.

10 Q And the employer would have to sign a statement
11 to that effect?

12 A An employer at a certain time, not in the last part,
13 because the union contract gave disability back to the
14 employers, but up until I think -- I am not sure of the exact
15 year, but I think up until about 1970 or '71, the employers
16 had to give employees disability benefits.

17 MR. MEYERSON: Would you mark this, please?

18 THE CLERK: Document marked for identifica-
19 tion as Government's Exhibit 20.

20 BY MR. MEYERSON:

21 Q Can you identify this document for us and
22 describe it for us?

23 A This is a DB-802, which is the form that the Workman's
24 Compensation Board approves for disability benefits under
25 the law of New York State.

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Bloody-direct

MR. HOLLMAN: I will object to her reading something not in evidence.

THE COURT: It is not in evidence. All she can say is she recognizes it; but she cannot tell us what it is.

MR. MEYERSON: I offer it in evidence; it has Salvatore Cirami's signature in it.

MR. HOLLMAN: This witness cannot identify that, and that is the problem.

BY MR. MEYERSON:

Q Is this something you keep in the ordinary course of business?

A Yes.

MR. MEYERSON: Then I move for it to be admitted in evidence.

MR. HOLLMAN: Does she recognize this document?

THE WITNESS: Yes, I do.

BY MR. MEYERSON:

Q Can you describe it for us, please?

A This is a document which the State of New York Workmen's Compensation Board puts out under the disability benefit law.

All employers who are part of this particular Local

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Blody - direct

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2 295 Welfare Fund paid for their employees through this fund
3 and had to fill out the document which was called a DB-802.
4 They told at what date they became members of this fund and
5 how many employess they had at that time.

6 Q What is the number of employess that this
7 document covers?

8 A The number of employess covered under this plan, it
9 says four here.

10 Q And do you remember how, the circumstances of
11 how this came to be signed, who the particular employees
12 were; do you have any independent recollection of the names
13 of the people involved here?

14 A I think the four that were covered under the plan at
15 this particular time were the two Barkowskys, one was Samuel
16 and I don't recall the name of the other Berkowsky.

17 Also Nicholas Terso and Mr. Anderson, I forgot the
18 first name.

19 Those were the four employees.

20 Now, all the employers had to fill out a DB-802 for
21 the Welfare Fund to cover their employees for disability
22 benefits.

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14 BY MR. HOLLMAN:

15 Q I see here on May 2, '69, that you were advised
16 that Mr. Anderson was an owner-driver; is that correct?

17 A Correct --

18 Q And thus --

19 A On May 2nd I advised Mr. Anderson that we were informed
20 by Sal Ciriame that Mr. Anderson was an owner-driver and
21 therefore we could not give him, we could not cover his
22 employees for disability benefits.

23 Q You couldn't cover Mr. Anderson?

24 A Not only Mr. Anderson, any of his employees.

25 Q And then what happened after that; is it that

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you received a document saying Mr. Anderson fell under the category of somebody who would be covered for disability?

A Mr. Sal Cirami signed a DB-802.

Q Somebody signed it?

A I can only assume, it is his signature, that he has four employees and he is under the contract since June 1966, and based on that we were able to give his employees disability benefits.

Q On the original document that you received from Mr. Cirami dated May 2, '69, it stated that he was an owner-driver and you were not going to pay the disability?

A No. He came under the contract in June '66 and he refused to sign the DB-802, which is normally sent to employers to sign. He did not sign until '69, at which time two of his employees became ill and applied to us for disability benefits, at which time we turned them down --

Q Right, yes --

A (Continuing) -- because we said their employer did not sign this thing and therefore we could not deal with them as individuals.

Q So it was then following that turn-down that Mr. Cirami then submitted this to you?

A In '69.

Q In June of '69?

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2 A Correct; whatever the date is, May 16, '69.

3 Q So that following that June document that you
4 received, you then advised these individuals that they could
5 receive their disability?

6 A That document was received on May 16, '69, that is
7 when he signed it, not June.

8 Q All right. Excuse me.

9 A Right.

10 Q And following that?

11 A And following that we were able to process and pay
12 these gentlemen for their disability claims.

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73a

Johnson - direct

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MARTIN JOHNSON, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. HOLLMAN:

Q Mr. Johnson, what is your occupation, sir?

A I am a certified public accountant.

Q How long have you been a certified public accountant?

A Since 1951.

* * *

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Q How about with regard to the tax return forms
1099s and so forth?

A I caused those to be prepared.

Q During the course of your examination of the
records of Mr. Cirami -- Air Package Corporation -- did
there come a time when you came across a trucker's agreement?

A Yes.

Q I am going to show you what is marked Govern-
ment's Exhibit 15 in evidence and ask you if that is the
agreement you came across in your studies?

A This may have been one of them, this type of agree-
ment that I did see.

Q That is dated what date, sir, this one in
evidence?

A June 28, 1967.

Q And you saw that document on the premises
of Air Package?

A Yes, sir -- this may have been one of them.

Q As the result of seeing that what did you do?

A Well, as a result of seeing this and, of course, I
did see cancelled checks, I at that point felt that perhaps
it needed some revision or at least some review from a
competent legal attorney.

Q Did you so get in touch with a competent

75a

Johnson - direct

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2 legal attorney?

3 A Yes, Mr. Viter.

4 Q Backing up for a moment, the cancelled checks
5 you are talking about are what?

6 A The cancelled checks were in regard to this contract.

7 Q You are talking about the truck rental checks?

8 A I am talking about the cartage checks.

9 Q Cartage checks. How about the truck rental
10 checks, too?

11 A At that time they prepared two checks; one was for
12 a rental which they were paying for the trucker and the
13 other was for the balance of the cartage checks.

14 Q Just simply yes or no, did you revise that
15 system?

16 A Yes.

17 Q I am going to go into that later. I want to
18 stay with the truck rental thing at this time. You then
19 went to Mr. Viter. As a result of seeing Mr. Viter, did
20 you have a meeting with Mr. Viter, yourself and Mr. Salvatore
21 Cirami?

22 A Yes, I did.

23 Q Would you tell the members of the jury what
24 was discussed at that time?

25 A Well, basically the purpose of the meeting was to

76a

8 Johnson - direct

2 revise, to review these, to see the provisions of the agree-
3 ment protected the corporation.

4 Q As a result of that meeting with Mr. Cirami,
5 did you undertake with Mr. Viter to make certain revisions?

6 A Well, we discussed what revisions were to be made.

7 Q I am going to show you what is marked Govern-
8 ment Exhibit 17 -- excuse me, it is Government's Exhibit 1
9 in evidence -- which is an agreement dated January 13, 1970
10 and I will ask you if you can tell me what that is, tell
11 me if you know what that is.

12 A This was a revised trucker's agreement.

13 Q Who was responsible for those revisions, who
14 or whom or how many people?

15 A Well, I would say Mr. Viter, myself and Mr. Cirami.

16 Q Would you tell us what you did with regard
17 to the 1967 agreement that you have before you, the trucker's
18 agreement, and the 1970 agreement?

19 A You mean what changes were made?

20 Q Yes. Let me back up for a moment, Mr. Johnson.
21 Did you have an understanding of what business Mr. Cirami
22 was in and in a sense how he was operating, based on your
23 examination of the books and records?

24 A Yes.

25 Q And discussion with Mr. Cirami?

77a

Johnson - direct

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Q What was your understanding of how he was operating?

A Well, he had based upon this agreement -- the agreement he had with the truckers to provide the services.

Q Trucking services?

A Trucking service, that is right.

Q And you understood that to be the way he was operating?

A Yes.

Q You also knew that 1099s were being filed?

A I filed the 1969 ones, I caused them to be filed.

Q Which placed those truckers in what capacity?

A As independent contractors.

Q You examined the 1967 agreement with the truckers that they were operating under and then you made revisions in the 1970 trucker's agreement. Would you tell us what revisions you and Mr. Viter suggested to Mr. Cirami or recommended to him?

A I will have to review it.

Q Go right ahead.

A I see one revision, the type of vehicle the trucker will provide.

Q Will you explain that to the jury. The jury has not seen either one of those documents.

78a

10 Johnson - direct

1 A May I read from each? The first agreement, 1967,
2 says that the trucker will make available to Air Package
3 for the performance of this service one vehicle of the
4 closed van type, 7 foot 6 inches in height, 96 inches in
5 width and 20 feet in length, and must have a 2-foot exten-
6 sion platform with rollup doors and two side doors and
7 must have proper locking devices on all doors and must be
8 equipped with a good burglary alarm system.

10 Q Mr. Johnson, before you read the other segments
11 what did you and Mr. Viter advise Mr. Cirami?

12 A Well, in discussing it, there were times they required
13 different types of vehicles and this had to be revised.

14 Q What did you recommend as a revision?

15 A That it not specify it.

16 Q Would you read the 1970 agreement?

17 A The trucker will make available to Air Package for
18 the performance of this service adequate vehicles to perform
19 the service basically.

20 Q Mr. Cirami followed your advice and Mr. Viter
21 and yourself agreed to that revision?

22 A Yes.

23 Q What other revisions were made?

24 A Well, I see the tenth clause.

25 Q How about back after paragraph 6?

1 11 Johnson - direct

2 A Did I miss something? I cannot read it too well
3 though it looks the same. The photostat is unclear.

4 Q Let me ask you, does this say "Truckers to
5 supervise and direct all the services performed by the
6 trucker"?

7 A If it says trucker it is the same. The copy is
8 unclear.

9 Q Let us go to paragraph 10, then. Any changes
10 in paragraph 10?

11 A Yes.

12 Q Will you tell us what they are?

13 A The first agreement says "The trucker agrees that
14 all cargo insurance, personal injury and property insurance
15 damage shall" --

16 It is the same, I am sorry. It is worded a little
17 different but it is basically the same. I will read the
18 two of them to you.

19 "The trucker agrees that all cargo insurance,
20 personal injury and property damage insurance shall be
21 provided by trucker."

22 "Air Package Distribution Limited agrees all cargo
23 insurance, personal injury and property damage shall be
24 provided by Air Package Distribution Services Limited."

25 Q Is there a change there?

12 Johnson - direct

A Yes, there is.

Q The jury does not understand the change.
Tell us in 1967 how Air Package was operating and what
changes you recommended for 1970?

A Well, I do not know how they were operating in 1967.
If you say 1969 --

Q You are looking at a 1967 trucker agreement
you have there.

A Yes.

Q That was in effect as of the date of that
agreement which was sometime in 1967?

A Right.

Q You have read that provision to us. What
changes did you recommend to Mr. Cirami to undergo with
regard to the 1970 agreement?

Before you read it, tell us what it was.

A I felt the corporation, Air Package Distribution
Service, should be carrying the cargo insurance in any case.
I do not recall, as far as the personal injury and property
damage insurance.

Q So I gather in 1967 Air Package was not
carrying cargo insurance?

A According to this agreement.

Q So you told Mr. Cirami about that?

81a
Johnson - direct

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A Yes, sir.

Q What recommendation did you make?

A I felt the corporation should provide this insurance.

Q And did you make that change in the 1970 agreement?

A It is made in the 1970 agreement.

Q Anything further?

A Well, I see clause 15.

Q Yes.

A The first one says "In consideration of the services and equipment to be Air Package, Air Package shall pay the sum of blank per week to trucker for the aforesaid services and equipment."

The second agreement says, "In consideration of the services and equipment to be furnished to Air Package, Air Package shall pay the sum of within ten days and a minimum of" and there are blanks "per week to trucker for the aforesaid services and equipment and pay for gas."

Q You say the 1967 provision which you read to us you and Mr. Viter advised Mr. Ciriame of certain things. Will you tell us what you advised him of and what changes were made?

A Well, I think the minimum provision must have been put in on the basis of our discussion.

1 14

2 Q And at whose suggestion, sir, if you recall?

3 A Probably based upon the facts that were there in
4 1969, where he did give them a minimum, and as far as the
5 gas is concerned he was providing the gas at the time.

6 Q Did you make the recommendation for these
7 provisions to Mr. Cirami?

8 A Yes.

9 Q They were then incorporated in the 1970 agree-
10 ment?

11 A Yes.

12 Q Those were all the changes made, sir?

13 A I will continue on. The only addition here in this
14 contract is in No. 21, which says it supersedes any prior
15 written or oral agreement.

16 Q So what you are saying is that the 1970 agree-
17 ment supersedes any of the 1967 agreements?

18 A That is right.

19 Q I take it with regard to all the other provi-
20 sions in the 1967 agreement since you made no revisions,
21 you agreed with the contents of those provisions?

22 A Yes.

23 Q With regard to both of those agreements, what
24 did you understand the purpose of them to be in the context
25 of Mr. Cirami's business operations?

83a
Johnson - direct

1 15

2 A I do not understand the question.

3 Q What did you understand the 1967 agreement and
4 the 1970 agreement to do? What did they bind, what was
5 their effect?

6 A Trucker services -- to provide services for the
7 corporation.

8 Q On what basis, sir?

9 A On the basis of the contract.

10 Q As an independent contractor?

11 A As an independent contractor; that is right.

12 Q And Mr. Ciriame understood that?

13 A Yes.

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Q Did you advise Mr. Ciriame of that change?

A Yes.

Q And did he accept your advice?

A Yes.

Q In addition to the checks' change with regard to the 1099s -- by the way, what does 1099 mean as far as you are concerned?

A A 1099 is issued to an independent contractor or any individuals for any payments for his services that are made to him.

Q Did you undertake to prepare the 1099s for Air Package?

85a

20 Johnson - direct

A I caused them to be prepared.

Q Did you make as a result of the change in the truck rental check and cartage check now being combined in one, was there any change in the 1099s?

A Yes, there were.

Q Did you institute those changes?

A Yes.

Q Will you tell the jury what changes you made?

A The gross amount of cartage was shown on the 1099. To this was attached, which was given to each trucker, a statement of the amount of truck rental that was paid for him for that year.

Q Again, did you advise Mr. Cirami of that change?

A Yes.

Q And did he follow your advice?

A Yes.

Q Mr. Johnson, based on your examination of the books and records and methods of bookkeeping procedures and discussion with Mr. Salvatore Cirami, was it your understanding that the corporation was operating in a proper, lawful manner?

A In my opinion it was.

* * *

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S. Cirami - direct

(The jury took its place in the jury box.)

MR. HOLLMAN: I will call Salvatore Cirami.

S A L V A T O R E C I R A M I , having been first duly

Sworn, took the witness stand and testified as follows:

* * *

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Q At any rate, you advised the truckers that if they are looking for a union job, union employment, this was not the shop for them?

A That is right.

Q While we are on that subject, in fact you do have some truckers who are members of Local 295?

A Yes, out of necessity, because some of the truckers have to have access to the companies on the airport or airlines at the airport that are organized by that particular Local, and if the truckers did not have a union book belonging to that Local, they could not get in or out of the airline that was controlled by the Union.

Q Based on economic necessity to get certain locations, you have to be members of Local 295?

A That is right.

Q If the man who arrived at a gate was not a member

S. Cirami - direct

37

of Local 295, in the truck, what would happen?

A They would refuse to accept his freight, picking up freight, or refuse to deliver freight to him.

Q You find to some extent it is necessary to deal with 295?

A As a means of doing business, we have to deal with them to some extent, yes.

Q I understand the head of that Local is Harry Davidoff?

A Yes.

Q Miss Leibman testified here he has been present on occasion in your shop?

A On occasion.

Q Generally speaking, what is your relationship, you as an employer, with him?

A With him, with Mr. Davidoff, I have no real relationship in a sense. He would come at times and try to organize some people or press that, you know.

Q Did you resist that?

A Oh, yes.

Q You were explaining to the jury what you tell the truckers when they arrive at your shop.

A I will explain to them what we do as I said before. We provide a ground service to the airlines. I explain to them

1 38

S. Cirami - direct

2 further that their relationship with me would not be employer-
3 employee, it would be contractor-subcontractor, they would be
4 self-employed individuals. My plan was to give them a flat
5 weekly price that included him and the piece of equipment in-
6 volved. The concept was, I gave them an opportunity to be in
7 his own business. I explained if he was a union man, the
8 trucking industry has what they call a shape up. For
9 example -- May I explain?

10 Q Go ahead.

11 A If the company has ten pieces of equipment, and you
12 have ten drivers on any given day, these ten drivers have to
13 show up. If there is not enough freight that day and there
14 are only seven trucks needed, the bottom three men go home with
15 no work. In my experience when I was a truckdriver, I just did
16 not see it was equitable for a man to leave his home in the
17 morning not knowing whether he was going to work and get no
18 work.

19 Q You have no shape up at your shop?

20 A We have no shape up, there is a fifty-two week year
21 contract.

22 Q What further did you advise the truckers?

23 A I advised them they would have to pick up freight from
24 the airlines on incoming traffice delivery to the various
25 consignees, pick up outgoing freight and deliver it to the

1 39 S. Cirami - direct

2 airlines.

3 Q What about the trucks themselves, anything
4 special about that?

5 A Yes. Some individuals I asked them if they had a truck
6 or did they care to get their own piece of equipment. Some
7 people did have trucks, but they were small, and I explained
8 to them in lieu of the truck that they did not have, they were
9 able to lease a truck from an affiliated company of ours.

10 Q The company is which?

11 A Jay Truck Rental.

12 Q What further did you advise them?

13 A I advised them they had to pay their own taxes.

14 Q And anything else?

15 A Let me think. Basically, I would advise them they
16 would be independent contractors, they were free to do any
17 other work they chose to as long as you had no conflict, and
18 we had the proper level of service, because we served airlines,
19 and they would fill out their own taxes, and be responsible for
20 the piece of equipment to the leasing company.

21 Q Did you ever say anything about them filing any
22 Schedule C's?

23 A Yes.

24 Q What basically would you tell them along that
25 line?

91a
S. Cirami - direct

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2 A I would tell them at the end of the year they would
3 not get a W-2 Form like an employee would, they would get a
4 1099, and they would have to file their own Schedule C and
5 pay their own taxes.

6 Q Who so advised you?

7 A My accountant, Mr. Johnson and Mr. DeStafano prior to
8 that.

9 Q You gave such advice to the truckers in 1967,
10 1968 and 1969?

11 A At all times.

12 Q Prior thereto, you had been the subject of an
13 Internal Revenue Service audit?

14 A That is right.

15 Q How long have you been operating in the manner
16 you just described to us?

17 A Since 1958.

18 Q Since 1958?

19 A Yes.

20 Q Do you recall the audit that was made by the IRS?

21 A Yes, I do.

22 Q And when was that audit made?

23 A I believe it was 1964 or '65.

24 Q And was there an Agent who came to your place of
25 employment?

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1 41

S. Cirami - direct

2 A Yes, there was.

3 Q Excuse me, your business.

4 A Yes, there was.

5 Q Was he on your premises?

6 A Yes, he was.

7 Q For any length of time.

8 A I think he was there for a week or two.

9 Q What did he look at while he was there?

10 A He looked at all my books and records.

11 Q Did he have access to the truckers' agreements?

12 A Yes, he did.

13 Q Did he have access to the 1099's.

14 A Yes, he did.

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(continued on next page.)

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S. Cirami - direct

1 42

2 Q Did you give him access to everything you had?

3 A He had access to all my books, records, bank statements,
4 cancelled checks, truckers' agreements, 1099's, whatever there
5 was, I made available, all my books and records.6 Q And was, or were withholding taxes being taken
7 from the administrative personnel?

8 A Yes, of course.

9 Q Did they see what was being paid to the admin-
10 istrative personnel and what was withheld?

11 A Yes.

12 Q You told him 1099's were being filed?

13 A Yes, he was aware of it.

14 Q And that audit was concluded about what time,
15 about what year?

16 A I believe it was 1965.

17 Q This wound up in an accessment against yourself
18 personally?

19 A Yes, it did.

20 Q A substantial one.

21 A Yes.

22 Q You are contesting it now?

23 A Yes.

24 Q You are doing it through your attorneys?

25 A Yes.

1 43 S. Cirami - direct

2 Q I gather the assessment runs to about \$200,000?

3 A Yes, that is right.

4 Q As a result of that audit in which all of these
5 books and records, with checks and 1099's, were you ever noti-
6 fied by the Internal Revenue Service now that you were not
7 taking proper withholding out from the truckers, and you were
8 not paying Social Security, or not taking proper Unemployment
9 Insurance out?

10 A No, I was not.

11 Q Did you ever receive any notice similar to the
12 one I read to Mr. Miller from the District Director of the
13 Internal Revenue Service, addressed to you, advising you to
14 take out withholding?

15 A No, sir.

16 Q When was the assessment made?

17 A The assessment, I believe, was made in 1966 or 1967.

18 Q So whenever the assessment occurred, you heard
19 nothing further from the IRS with regard to any of these taxes?

20 A No.

21 Q And you continued to operate the same way you
22 had since 1958?

23 A Yes, sir.

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* * *

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Q Was Mr. Viter and Mr. Johnson aware of what you were doing, and how you were operating?

A Yes, they were.

Q They were aware of what you were telling the truckers?

A Yes, they were.

Q They knew this agreement was being signed?

A Yes,

Q In fact, they told you to have it signed?

A Yes.

Q Is that also true of Mr. DeStafano and Mr. Lutzker?

A That is right.

Q We have heard testimony here about the use of timecards. Will you tell the jury what the situation is with regard to timecards?

A Yes. The purpose of the timecards was not that these people were being paid on an hourly basis. It was some sort of a way of knowing when these individual truckers arrived, to

1 48 S. Cirami - direct
2 maintain the schedule that had to be maintained in providing
3 the service to the airline.

4 Q You were not paying them, based on what was
5 punched in on the timeclock?

6 A No, absolutely not, they were being paid, based on the
7 contract that we had negotiated for their services.

8 Q And over what period of time were the timecards
9 used, if you recall?

10 A They were used only for the purpose of knowing when the
11 trucker arrived to pick up the shipment.

12 Q Were you using them in 1969?

13 A I do not remember, because in 1968, the latter part or
14 middle of 1968, I had left New York, and I could not really
15 tell you if there were timecards in 1969.

16 Q This situation with regard to these truckers'
17 agreements, did you have the truckers sign those agreements?

18 A Yes, I did.

19 Q There has been some testimony that possibly
20 some agreements were not signed. Do you know anything about
21 that?

22 A Yes, that is a possibility, because I might have inter-
23 viewed an individual and explained the manner in which we
24 operated, and it might have been I needed his services right
25 then and there, and the office girl was busy, or whatever, and

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S. Cirami - direct

2 I would say, okay, you can get started, but she will draw up
3 a contract, and then you will sign it. Inadvertently sometimes
4 we just overlooked it.

5 Q How about this question of Local 295 and Dis-
6 ability Payments to be made to three of the truckers? Would
7 you explain that to the jury, how that occurred, and what the
8 situation was?

9 A Well, the individuals that had to be in the Union for
10 the purpose of having access to certain airlines, we had to
11 pay the Disability Benefits and Welfare Benefits and Pension
12 Benefits. They were independent contractors at any rate, be-
13 cause they were so notified by the Union. There was an inci-
14 dent one of them got a heart attack and one had an operation,
15 and they were collecting benefits, as I understand they did.

16 Q Mr. Cirami, in addition to operating in the
17 manner in which you have since 1958, what did you rely on to
18 be assured that you were operating in a proper, lawful manner?

19 A I relied on the accountants and lawyers.

20 Q How many accountants and how many lawyers?

21 A Well, Mr. DeStefano was one particular one I had, and
22 prior to that I had a man named Mr. Joseph Cooper, and presently
23 I have Mr. Martin Johnson.

24 Q With regard to the attorneys you mentioned, will
25 you tell us?

A Morton Lutzker and Mr. Viter.

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50 S. Cirami - direct

Q Have you relied on anything else to be sure you are operating in a lawful manner?

A Well, other than the fact this is the practice, and I was not unique in doing it. Other companies have been operating this way for years.

Q The independent contractor concept is quite prevalent in the trucking --

MR. MEYERSON: Your Honor, this is completely irrelevant unless he knows all of the facts and circumstances of what these other companies do, including the crucial issue of what control those employers have over the truckers and the exact arrangements with any other --

MR. HOLLMAN: I will withdraw the question.

Q The crucial test here, Mr. Cirami, is what was going on in your mind. What else did you rely on with regard to the activity of the Internal Revenue Service concerning your business functions?

A Well, I felt they were completely aware how I was operating, they have certainly audited me very thoroughly, and I got no notice from them, telling me, Mr. Cirami, what you are doing is incorrect, it is illegal, or wrong, or any such thing as that.

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S. Cirami - direct

2 Q The Government here proceeded by way of in-
3 dictment as of April 1973, you are aware of that?

4 A Yes, of course.

5 Q You never received or your corporation never
6 received an assessment for the fact that withholding taxes
7 were not withheld from the Internal Revenue Service?

8 A No, I did not.

9 Q Nor did you receive any notice of Social
10 Security or Unemployment?

11 A We did not.

12 Q You just got hit with a criminal indictment?

13 A That is right.

14 Q The assessment against you was against you
15 personally, it is not an assessment on the payroll tax or
16 anything like that?

17 A That is right.

18 Q Your income tax?

19 A Yes.

20 MR. HOLLMAN: I have no further questions.

21 CROSS-EXAMINATION

22 BY MR. MYERSON:

23 Q So there came a time that you went to Puerto
24 Rico; is that right?

25 A Yes.

Q And you left the business in the hands of your son?

A I cannot quite hear you.

THE COURT: Talk up.

Q You left the business in the hands of your son?

A I left him to run the business, yes.

Q And when was this?

A Sometime in 1968-69.

Q How long were you away?

A Up until very recently, in fact technically I am still away. I come back from time to time.

Q During that period is it Mr. James Cirami who talks with the truckers and Mr. James Cirami who does everything with the books and records and in fact knows the entire operation and how these truckers are treated; right?

A Would you repeat the question? I think you asked me too many questions at one time for me to be in this position to answer you.

Q To make it very short, he knows how to run the business and that is why you leave him in charge; is that right?

A He is running the business as I set it up, as I set up the format originally. I just merely put him in charge.

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S. Cirami - cross

He is my son and when I went to Puerto Rico and decided to start an operation there I left him to continue running the business as I had set it up.

He is the one who now hires truckers during this period and he is the one who talks to them about any consideration if the occasion arises but the times I am here pretty much I do that myself.

Q If you are away in Puerto Rico and you have to hire new truckers --

A We have not had occasion to, sir, since I have gone to Puerto Rico. The business has not increased where we needed additional people. It has decreased substantially.

Q No one has left?

A People have left, sure.

Q Don't you have to replace them?

A I imagine if someone left and he had to be replaced they would have to be replaced.

Q Do you tell everyone about -- every trucker who comes in to you about leasing arrangements, is that right?

A That is right.

Q And you tell them they have to lease a truck from your other corporation, Jay Trucking?

A I don't tell them they have to.

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* * *

THE COURT: What bothers me in this case is that if this is a corporate situation then how did the individuals get involved? That has been bothering me throughout the whole case and I am trying to find out why the corporations are not the defendants.

MR. HOLLIAN: It was recommended that the corporations be defendants and the recommendation was appraised and I think that the fault necessarily is in this indictment.

MR. MEYERSON: This is not a case where

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we are asking money from the defendants, this is a case of criminal liability. As officers of these corporations, they are liable.

THE COURT: They are not being charged, that is what bothers me, they are not being charged as officers, they are being charged as individual responsible persons, as persons, forgetting the corporations. You have already pierced the corporate veil, you said we don't have a corporate veil, we don't have a corporate entity in the laws of the State of New York. We don't have the certificate of incorporation which has been filed with the State of New York. Apparently these defendants are running a family corporation and you are forgetting about that and you are charging them with the crime.

MR. MEYERSON: That is now for the jury to determine.

MR. HOLLMAN: Your Honor, that is not the charge in the indictment.

THE COURT: Before you get to the jury, how do you pierce the corporate veil without proof to show it was a fraudulent corporation?

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MR. MEYERSON: Here we have complete control and direction of everything.

THE COURT: I don't dispute it is a family corporation; but you have to show fraud.

MR. HOLLMAN: Your Honor, the indictment charges:

"...whereas, as the defendants then and there well knew, the total taxable wages paid employees for said quarter was the sum of \$39,401.82 upon which wages the defendants owe to the United States of America federal income taxes withheld from wages and Federal Insurance Contributions Act taxes due."

THE COURT: How do the defendants owe this money?

MR. MEYERSON: It says:

"...the defendants Salvatore Cirami and James Cirami who were the President and Treasurer and Vice-President and Secretary respectively of Air Package Distribution Service, Ltd., a corporation..."

THE COURT: But you are not charging them as officers. You are charging them personally, I believe, and you are going to convict them of a

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2 crime which the corporation committed.

3 MR. HOLLMAN: That is absolutely right.

4 THE COURT: That is what you are doing,
5 and I read the indictment quite clearly and very
6 closely, and I have been thinking about it
7 throughout the whole trial.

8 I cannot understand what has happened to
9 the corporation in this case, why do we have the
10 corporation if the defendants can be personally
11 liable on a situation; and that is not the reason
12 for a corporation.

13 The taxes are due from whom? From the
14 corporation. When a corporation files its taxes,
15 it files two forms, number one, the corporate
16 form, then the salaries to the president and the
17 officers, and that is another form being filed,
18 but that is something different.

19 MR. MEYERSON: Your Honor, I think it is
20 clear here that the defendants are charged as
21 officers and that they are criminally -- not that
22 they owe the money personally but they are
23 criminally liable as the president and as the
24 officers of the corporation for what happened.

25 This is not a civil matter --

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THE COURT: The corporation is not charged.

MR. MEYERSON: We don't have to pierce the corporate veil; this is not a civil case.

THE COURT: I did not say that; but I say you've got to show something with the corporation, the corporation did something, and if the defendants are responsible to the corporation, then that is why they are being charged personally.

MR. MEYERSON: I don't understand what you mean by that. The defendants are the ones who signed all these forms; the defendants are the ones who signed all the 941 forms; the defendants are the ones who signed the income tax returns, and this is all in evidence.

THE COURT: The false, fraudulent employer's quarterly tax return.

MR. MEYERSON: If this was done fraudulently at their direction --

THE COURT: It says: "...a false and fraudulent employer's quarterly tax return."

Now, will you please tell me who the employer is?

Let us say the truck drivers were employees, for the sake of argument only, whom would you say

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would make out the false employer's tax form,
would it be the individuals or would it be the
corporation?

I am going to take a ten-minute recess.
I want to look at this more myself, it bothers
me.

MR. HOLLMAN: Your Honor, as to Counts 1
through 14, at least, your Honor, it is clear
that the defendants are charged personally with
regard to each one of these counts.

THE COURT: It says the defendants owe to
the United States of America income taxes, it
doesn't say that the corporation owes. It is not
a personal income tax case; it doesn't say that.

I think you had better look into it.

Now I have not made up my mind at all, I
may be completely erroneous, what I am saying is
that I should give it some thought.

MR. JOSEPH: Your Honor, as co-counsel
with Mr. Hollman, I move to dismiss Count No. 2
of the indictment on the ground that the pleadings
as set forth and the allegations as set forth do
not specify and are not in conformity with the
requirements of the Federal Rules and Regulations

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2 requiring a full allegation, a necessary allegation,
3 and in support of my motion may I just take a
4 moment to refer to the type of counts set forth
5 in this indictment:

6 It merely says in Count No. 2:

7 "The allegations in Count 1 hereof are
8 repeated and realleged for Counts 2 through 14 of
9 this indictment as though fully set forth therein."

10 Now if I were to look at Count No. 1, what
11 part of Count No. 1 are we referring to, are we
12 referring to the fact that they were president,
13 treasurer, vice-president? The full Count No. 1
14 talks about certain things ending on March 31,
15 1967 and on the facts concerning the mathematics,
16 the \$13,000 computation.

17 Your Honor, the count is so completely
18 defective as an omnibus count, and they are without
19 specifying very clearly what part of Count No. 1
20 they are referring to.

21 Your Honor, I object to the vagueness of
22 the account, the mere vagueness of the count
23 compelled a dismissal of it.

24 MR. MEYERSON: I think it is clear, your
25 Honor, and I am not going to say anything about

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2 that. I think it is so obviously clear, if you
3 read Count 2, as to exactly what it is referring
4 to.

5 THE COURT: We have a ten-minute recess,
6 all right.

7 (A fifteen-minute recess was then taken.)

8 (At 4:45 o'clock p.m., the jury took its
9 place in the jury box.)

10 THE COURT: I have called you in to let you
11 go. We have a problem.

12 We will proceed tomorrow probably with the
13 defendants' case.

14 You will be excused tonight.

15 Please return here at about 10:15 tomorrow.
16 That will be time enough. Don't talk about the
17 case.

18 (The jury then left the courtroom.)

19 MR. MEYERSON: Your Honor, at this time,
20 the Government would move to strike as surplusage
21 from Count 1 all after the figure \$39,401.82, from
22 the word "upon," to the end, and that would cover
23 Counts 1 through 14.

24 THE COURT: How would that read?

25 MR. MEYERSON: It would read, "That during

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the period from January 1, 1967 to July 31, 1971, inclusive, in the Eastern District of New York, the defendant Salvatore Cirami and James Cirami who were the President and Treasurer and Vice-President and Secretary, respectively, of Air Package Distribution Service, Ltd., a corporation, with its principal place of business in Queens County, New York, did willfully attempt to evade and defeat a large part of the federal income taxes withheld from wages and Federal Insurance Contributions Act taxes due and owing to the United States of America for the quarter ending March 31, 1967 by preparing and causing to be prepared and thereafter filing and causing to be filed with the Internal Revenue Service Center, Andover, Massachusetts, a false and fraudulent employer's quarterly tax return, wherein it was stated that the total taxable wages paid employees for the third quarter was the sum of \$13,320.82 and that the total amount of tax withheld and Federal Insurance Contributions Act taxes due thereon was the sum of \$1,172.23, whereas, as the defendants then and there well knew, the total taxable wages paid employees for said

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quarter was the sum of \$39,401.82."

THE COURT: You are taking out what?

MR. MEYERSON: Everything after that.

MR. HOLLMAN: Read the part you are deleting.

THE COURT: Deleting the following --

MR. MEYERSON: "... upon which wages the defendants owe to the United States of America federal income taxes withheld from wages and Federal Insurance Contributions Act taxes due in the total amount of \$3,467.36."

MR. HOLLMAN: Your Honor, I would oppose that on a number of grounds; the first ground would be that Counts 1 through 14, including that language, charge a particular offense.

The defendants have always been charged with failing to or evading taxes upon wages that the defendants owed. That was what they were charged with in this indictment, a specific crime.

Now they wish to delete that so as to charge them with less than what the Grand Jury has charged them with here.

THE COURT: It is a question whether the Court considers that language surplussage or whether or not it is necessary for the validity of the

indictment. It goes without saying that there is no question that it is not the defendants that owe the money to the Federal Government. It would be the corporation, so therefore to explain further what the count would be might well cause surplussage as far as I am concerned.

MR. HOLLMAN: Except this count charges them with owing, that is what the Grand Jury charges them with, with owing this amount and evading the payment of that.

THE COURT: This charges under 7201 an attempt to evade or defeat taxes, any person willfully attempting in any manner to evade a tax of this type or the payment thereof, shall in addition to other penalties as provided in the law, be guilty of a felony.

MR. HOLLMAN: The indictment charges that they intended to evade and defeat a tax owed by them to the United States of America, and that is the charge of the indictment.

THE COURT: No. They are being charged with "willfully attempt to evade and defeat a large part of the federal income taxes...by preparing and causing to be prepared and thereafter filing and

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1 causing to be filed with the Internal Revenue
2 Service Center, Andover, Massachusetts, a false
3 and fraudulent employer's quarterly tax return" --
4 the "employer's" can be referable to the corporation,
5 I assume that is what it means --
6

7 MR. HOLLMAN: But it goes on.

8 THE COURT: You are reading it the same as
9 I am reading it.

10 MR. HOLLMAN: That is what the Grand Jury
11 charges them, but the Grand Jury charged them
12 further with evading and defeating a large portion
13 of the taxes that they owe to the United States.

14 THE COURT: The Grand Jury had no right to
15 charge them with the owing of a corporate tax.

16 MR. HOLLMAN: But that is what it does.

17 THE COURT: That will be surplussage. They
18 cannot be charged with that since they couldn't
19 possibly owe it, it couldn't be in violation of
20 law.

21 MR. HOLLMAN: Then this indictment should
22 be dismissed on the grounds that it is an offense
23 charged which they cannot be charged with.

24 THE COURT: I think up to the point
25 \$39,401.82, the indictment would be sufficient

1 to submit to a jury on that question of whether
2 or not they acted and represented the employer,
3 which would be the corporation, and whether it was
4 a violation of 7201.
5

6 I will agree with you that it is not the
7 best indictment that I have ever seen drawn, and
8 I hope I don't see too many more like it.

9 MR. JOSEPH: May I say something, sir?

10 THE COURT: Yes.

11 MR. JOSEPH: Indictments are criminal --

12 THE COURT: There is no question about that.

13 MR. JOSEPH: (continuing) -- not civil.

14 Now when a Grand Jury indicts and the
15 United States Attorney's office then sets forth
16 the basis of the evidence in the form of plead-
17 ings, the pleading is the one that the law says
18 we are confronted with.

19 The pleading here is substantive. This is
20 not surplussage at all, it is part of the first
21 count, and if the United States Attorney chooses
22 to change any part of that first count, we are
23 surprised, and moreover, it removes from us the
24 right of, the constitutional right of protection
25 that we are afforded in meeting the allegations in

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the indictment.

This count is completely defective.

THE COURT: Well, that is why I, of course, expect you are placing it on the record. However this Court is sustaining the position at this time even though I am not at all happy with the language of the indictment.

I think it is sufficient in its entirety and that is pursuant to United States versus Burger, 325 Fed. Sup. 12, page 1297-17 and affirmed by the Second Circuit Court, and this case is similar to the charge as made here wherein a defendant who was the president of a corporation was charged with the crime of evasion under 7201.

I will use that as a basis so that they will know what I am saying and they will know what you are saying as well.

That goes to each and every one of the counts in the indictment.

MR. HOLLMAN: Counts 1 through 14.

THE COURT: With the exception of 16, which the Court felt was not proven.

MR. HOLLMAN: Counts 15 and 17.

MR. JOSEPH: Just for purposes of the record,

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2 may we have your Honor's ruling clearly on Count
3 No. 16, are you dismissing it?

4 THE COURT: Counse 16 the Court is dis-
5 missing on the basis of the testimony.

6 MR. JOSEPH: At least I know I have it
7 on the record.

8 MR. HOLLMAN: Your Honor, we are faced
9 with the same problems with Count 15 and 17,
10 wherein the Grand Jury has charged these defen-
11 dants with evading the Federal Unemployment Tax
12 in such-and-such a sum.

13 THE COURT: I would say as to Count 15
14 that the Court would strike as surplussage after
15 the figure \$87,359.10, beginning with the word
16 "upon," that will be stricken as surplussage in
17 the indictment.

18 MR. MEYERSON: And the same with 17 in
19 the indictment, 17 should be stricken.

20 THE COURT: I think you should strike it
21 from there.

22 MR. HOLLMAN: We are not getting it down,
23 17 from hwere to where?

24 THE COURT: 15 is where I said, from "upon" --

25 MR. JOSEPH: "...which wages they owe to

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2 the United States of America Unemployment Taxes
3 in the amount of \$2,708.13."

4 THE COURT: Right. That is as to 15.

5 MR. JOSEPH: Your Honor is granting the motion
6 of the Government to strike it as surplusage?

7 THE COURT: Yes, the Government has made
8 the motion.

9 MR. JOSEPH: I would like to make it specific
10 for the record.

11 THE COURT: The Court likewise feels it
12 proper to strike the --

13 MR. MEYERSON: The Government moves on Count
14 17 as well as 15.

15 THE COURT: Count 17, from the word "upon,"
16 that is also stricken.

17 MR. JOSEPH: "...upon which wages they
18 owe to the United States of America Unemployment
19 Taxes in the amount of \$2,682.97."

20 THE COURT: That likewise is being stricken.

21 MR. HOLLMAN: Your Honor, you have our
22 exception to all those rulings?

23 THE COURT: Naturally.

24 MR. JOSEPH: May I argue about Count No. 18?
25 I wish your Honor would read it. I say

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2 that it is so vague that it clamors for dismissal.
3 I would like your Honor to read it.

4 Your Honor, I don't understand what it
5 means, "...in that they represented the recipient's
6 of payment from the corporation as independent
7 contractors..."

8 THE COURT: Well, what they are trying to
9 say is -- well, they did not want to use the words
10 "independent contractors" or they did not want to
11 use the word "benefactors," so they used the word
12 "recipient," I suppose; but I think what they were
13 probably saying that the ones who received the
14 moneys received them as independent -- no, not as
15 independent contractors, but as wage earners or
16 employees.

17 MR. JOSEPH: I can only go by what the
18 Government puts into the papers.

19 THE COURT: I agree with you.

20 MR. JOSEPH: I say the language is deplorable,
21 vague, not clear, and deserves the full treatment
22 of dismissal.

23 MR. HOLLMAN: The indictment has to be
24 crystal clear.

25 THE COURT: If the defendants or their

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1 representatives, attorneys, counsel, understand
2 the nature of the charge that is being made
3 against them, then the validity of the indictment
4 must stand --
5

6 MR. MEYERSON: Thank you, your Honor.

7 THE COURT: I think that is a pretty
8 general principle.

9 MR. JOSEPH: Also on the basic substantitive
10 problem, the Government has the burden on its prima
11 facie case to prove that the defendants "...did
12 willfully and knowingly" -- I am talking about
13 Count 18 -- "aid and assist in, and counsel, pro-
14 cure, and advise the preparation and presentation
15 to the Internal Revenue Service Center, Andover,
16 Massachusetts" --

17 THE COURT: Those are the essentials they
18 must prove and they must prove the essentials to
19 the satisfaction of the jury.

20 MR. JOSEPH: They must have some proof, I
21 submit to this honorable Court, but there is not a
22 scintilla of proof.

23 THE COURT: They presented the case to the
24 Court and jury.

25 MR. JOSEPH: They did? There is not a

scintilla of proof in the prima facie case as to aiding and abetting.

THE COURT: Me. Meyerson, I want to hear explicitly from you concerning this "...aid and assist in, and counsel, procure, and advise the perparation, and presentation to the Internal Revenue Service Center" --

MR. MEYERSON: Your Honor, they signed the --

THE COURT: Continuing) Not what the independent contractors did, what the defendants did in order to effectuate it, the --

MR. JOSEPH: That is the basis of the count.

THE COURT: (Continuing) -- From 1099.

MR. HOLLMAN: The only testimony we had is from Sherril or the bookkeeper who said she mailed them out and the fact the accountant prepared them.

MR. JOSEPH: There is not proof at all.

MR. MEYERSON: The defendant signed all of those forms.

MR. HOLLMAN: Not the 1099.

THE COURT: Signing is aiding and abetting, counseling, advising.

MR. MEYERSON: The bookkeeper said she took

all her orders from the Ciramis.

MR. HOLLMAN: On this point, she was clear, the 1099 was prepared by the accountant and the accountant testified the same way.

MR. JOSEPH: It has to be specifically stated by a witness on the witness stand, you cannot infer.

MR. MEYERSON: That is my recollection.

MR. JOSEPH: May I make my motion and renew it?

THE COURT: I will reserve on that until tomorrow morning.

MR. JOSEPH: That goes to 18 and 19, also.

THE COURT: I want to review and reflect on the witnesses I have heard, even though I don't have any notes.

MR. JOSEPH: I'm sure you are well aware of what went on.

MR. MEYERSON: My recollection is that the bookkeeper said she did everything on orders of her boss.

THE COURT: She said she made out the checks, she made out two checks, she signed the checks and that she would turn them over to the other corporation; she also said as to the 1099 form that

1 she made them out and they were signed. The
2 question is was this a direction or was this a
3 situation where she also knew this by reason of
4 the job she had.
5

6 MR. HOLLMAN: She also testified, she said
7 the accountant prepared the 1099 and she mailed
8 them out and Mr. Miller testified that the
9 accountant as far as he knew prepared the 1099.

10 MR. JOSEPH: Secondly, the count talks
11 about "willfully and knowingly aid and assist."
12 There has not been a scintilla of proof, I repeat
13 it again, although it is trite to repeat it, I
14 must say so.

15 THE COURT: I will reserve on that.

16 MR. MEYERSON: What I think was not
17 expressed but is by implication, she also said
18 that everything -- that Mr. Cirami always had
19 knowledge of all this, and I infer by being the
20 boss and by letting the accountant do it.

21 THE COURT: There may not be direct
22 evidence of it, but you think there may be
23 sufficient circumstantial evidence, sufficient
24 by reason of a chain of circumstances to tie them
25 in?

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2 MR. HOLLMAN: There is no evidence on
3 that point.

4 I might further say with regard to James
5 Cirami clearly there is no evidence on those two
6 counts, he was not even mentioned with regard to
7 these two counts by any witness, and yet he is
8 charged in both these counts.

9 Your Honor, those should go out.

10 THE COURT: As to Mr. James Cirami, I don't
11 know. It seems to be more by association.

12 MR. MEYERSON: I'm trying to establish
13 honestly a basis about all of this, I agree with
14 your Honor that where James Cirami is concerned,
15 I don't recollect having any independent recollec-
16 tion of him saying anything to --

17 THE COURT: To anybody.

18 MR. MEYERSON: To the bookkeeper, as far as
19 this count is concerned.

20 THE COURT: Or any count.

21 MR. MEYERSON: (Continuing) And I would
22 say that it is more by circumstantial evidence
23 that he signed many of these returns, he signed
24 many of the 941's, and he signed all of these and
25 being an officer of the corporation, I think it

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2 is clear that the Government has sustained its
3 burden at least as to Counts 1 through --

4 THE COURT: At the moment.

5 MR. MEYERSON: That on Counts 18 and 19,
6 I agree it is weaker than on the other counts
7 because it is the actual 1099; on the other counts,
8 I think the circumstantial evidence is much clearer.

9 MR. HOLLMAN: At this point, I would like
10 to make a formal motion to move to dismiss against
11 James C'irami on the grounds, aside from the fact
12 that his name appears on some of these returns,
13 that there is no evidence whatever indicating
14 willingness or knowledge on his part or any par-
15 ticipation.

16 THE COURT: Any activity whatever, other
17 than being a member of the corporation, any
18 activity.

19 I will reserve on it until tomorrow morning.
20 I would like to reflect on it. I have not heard
21 one scintilla of evidence, even his name being
22 mentioned as ex-president; somebody said they knew
23 him at one point, that is all, and that really
24 cannot make you guilty of a crime.

25 * * *

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1 A-1

2 THE CLERK: United States of America vs.
3 Salvatore Cirami and James Cirami.

4 (The following occurred without the presence
5 of the jury.)

6 THE COURT: We have some motions to dispose of
7 and the first of the motions would be as to Count 18
8 and 19.

9 The Court was reviewing those counts and at
10 this time the Court has about made up its mind to
11 dismiss on the basis of the testimony and the evidence
12 as to James Cirami.

13 Now, before I do so, do you have anything to
14 say about that?

15 MR. MEYERSON: Yes, I do, your Honor.

16 Your Honor, on almost all of the tax returns,
17 I would say almost all of them, about 90 percent of
18 the papers were actually signed by James Cirami. So
19 he was aware of all of these things and he was aiding
20 and abetting, which, as you know, is in there, 18 U.S.
21 Code Section 2, I say as to all of these statutes,
22 as to them, he was aiding and abetting and signed
23 his name; so, obviously, he had to know what he was
24 doing because it was over a long period of time.

25 THE COURT: Assuming, arguendo, that I accept

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1 what you say, that he did sign those, I find nothing,
2 in reviewing the testimony, in my own mind I find
3 nothing to show that he was aiding and abetting some
4 type of crime or intentionally did it with the idea
5 of violating the law or that there was any willingness
6 which was involved.
7

8 MR. MEYERSON: He was an officer of the
9 corporation, not only one corporation but both
10 corporations, he was an officer especially of J.
11 Trucking; he was president of J. Trucking. So he would
12 have to know by circumstance what the operations were.

13 THE COURT: I don't disagree that he would have
14 to know that he was signing papers in behalf of the
15 corporation, but that is not the problem the Court is
16 facing.

17 MR. MEYERSON: What the papers show, and it is
18 the whole thing here, they were calling these people
19 independent contractors, now he would have to know
20 that because Air Package was a trucking operation.
21 That is all they did. So being vice-president of
22 that corporation he would have to know how they were
23 treated. Obviously, he knew how they were treated
24 because he was signing all the tax returns.

25 THE COURT: I don't know. It seems to me to

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1 A-3

2 be guilt by implication than 'guilt by proof; and I am
3 talking about guilt with quotations, I am not passing
4 judgment.

5 MR. HOLLMAN: All the Government put in was
6 that this man was a member of the corporation and he
7 signed returns, period. That, obviously, is no showing
8 of willingness at all.

9 Over and above that, you have testimony that
10 the forms he signed were prepared by the accountants,
11 and, obviously, in the normal course of the business
12 they came before him and he signed them. There is no
13 indication of willingness by the signature. There
14 should be no submission of James Cirami to this jury
15 at all.

16 MR. MEYERSON: Your Honor, a person has to be
17 absolutely blind to sign tax returns for three years
18 claiming that they were all independnet contractors,
19 and from the circumstances of this and being an officer
20 of those two corporations and knowing that these checks,
21 if nothing else, that these checks were being endorsed
22 by the bookkeeper --

23 MR. HOLLMAN: There is no proof of that; there
24 is no proof he had anv knowledge of that.

25 MR. MEYERSON: (Continuing) As an officer of

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1 this corporation; and not only as an officer, we are
2 talking about the president of J. Trucking, we are
3 talking about his being the vice-president and we are
4 talking about a period of three years.
5

6 I really don't think there should be much of a
7 doubt of it going to the jury, although I agree that
8 they are going to have a very rough time deciding it.

9 THE COURT: That bothers me more than anything
10 else, that is submitting it to the jury because it
11 seems to me this is a kind of an innuendo sort of
12 situation, it could be a compromise situation in their
13 bringing in a verdict, and that is what it seems to
14 me from where I sit. It could readily be the result
15 of such a situation, and such a situation is always a
16 problem.

17 MR. MEYERSON: That is always a problem when
18 you have two defendants.

19 THE COURT: Not two defendants but a relation-
20 ship which is existing as we have here. You don't get
21 too many father and son trials; this is about the
22 second one I have ever had in my whole life.

23 MR. HOLLMAN: Your Honor, on the Government's
24 theory, anyone in any corporate position can be placed
25 in this position by putting his name to any document;

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he would then be subject to being penalized for a criminal matter, and I don't see that.

THE COURT: I don't think he is saying that, he is saying --

MR. MEYERSON: I am not saying that. We are not talking about any corporate official. Mr. Hollman misses the point. The man was the president.

MR. HOLLMAN: Which may insulate him more from the activities than anything else.

MR. MEYERSON: He was the vice-president and secretary or treasurer, he was vice-president, secretary or treasurer of the other corporation and went ahead and signed, and I think that definitely shows, and not only did he sign the tax returns, not only did he sign the checks which were made out to these truckers, but for the truck rentals. So he knew what went on. And, in fact, he signed the agreements with them.

I, myself, did not even focus on that, signing those agreements, but that means he did know absolutely everything that was proven against Salvatore Cirami, and the proof against Salvatore is that he spoke to the truckers, but it was James Cirami who signed the agreement with them.

MR. HOLLMAN: It means nothing in the normal

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2 course of business set by Sal Cirami, James Cirami
3 came into the corporation late and he continued the
4 business practice and signed an agreement. There is
5 not one bit of testimony that James Cirami got together
6 with the truckers and advised them of this or that.

7 MR. MEYERSON: He signed the agreements with
8 them which, as a result, they thought made them
9 independent contractors.

10 MR. HOLLMAN: That is a civil situation; we
11 are talking about criminal responsibility. You cannot
12 find anything in the record that James Cirami knew of
13 this.

14 MR. MEYERSON: I think the fact that he signed
15 the papers makes him now in the same category as Sal,
16 the only difference is that Sal orally spoke to the
17 truckers.

18 THE COURT: No truckers said they had anything
19 to do with James Cirami at all.

20 MR. MEYERSON: I am saying that Salvatore
21 Cirami spoke to them and James Cirami signed the
22 agreement with them.

23 MR. HOLLMAN: All you have is an agreement with
24 James Cirami, at best, that he signed an agreement,
25 but --

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MR. MEYERSON: And then wrote out all the taxes and filed the 1099s.

MR. HOLLMAN: The accountant does that. He did not do that.

MR. MEYERSON: He did not do it; he just signed his name.

MR. HOLLMAN: That is right. When an accountant prepares something, we sign it.

MR. MEYERSON: We have no proof as to what happened there. All we know --

MR. HOLLMAN: You have the bookkeeper who said that.

MR. MEYERSON: The bookkeeper did not.

MR. HOLLMAN: The bookkeeper said the accountant prepared the 1099s and she mailed them out.

MR. HOLLMAN: Why don't you hold her responsible for mailing it out?

THE COURT: You are not asking him to supply proof to you; he is not going to supply the proof.

MR. HOLLMAN: Why don't you indict her?

THE COURT: You have no proof. He did not do that. You are asking him to supply proof. I don't know any lawyer that would do that.

MR. MEYERSON: There is proof that he signed

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the checks to them also; he did not do that with any accountant.

THE COURT: I am assuming all this; there is nothing wrong with that. It is part of the business. The question is, is there any proof in the case, on your side of the case, giving you the most favorable interpretation of the testimony in the case, is there proof, number, one, of an intent, of a willingness of knowingly doing it?

I have sifted through the testimony. The fact he signed a piece of paper doesn't show intent.

MR. MEYERSON: Where is the proof against Salvatore Cirami? If there is such proof, it is the same as against James.

THE COURT: No, I wouldn't say that. I say it is different.

MR. MEYERSON: I say the evidence more than justifies it, the evidence is the testimony and the agreement and the fact that he signs the agreements with them personally, the fact that he signed the check personally without any help from the accountants, he did that all by himself, Sal spoke to him.

MR. HOLLMAN: They were prepared by the book-keeper.

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MR. MEYERSON: And he signs them.

MR. HOLLMAN: He signed them, he has his signature on them, but --

MR. MEYERSON: He was president of the corporation.

MR. HOLLMAN: Under the theory you could indict the secretary for mailing them out; you could have indicted the bookkeeper here because she put them in the envelope and mailed them. They knew these people were not truckmen but were in fact employees. Under that theory all you need is some kind of normal business practice such as putting a letter in the mail or signing things. There is no other proof but the signature; there is not one bit of evidence that James Cirami, in the record submitted to the jury, and that does make a problem, there is no evidence and they have no reason to jeopardize the man who may be found guilty when there is no basis for such a finding.

MR. MEYERSON: It is the same proof, I submit at this point, as you have against Salvatore Cirami.

MR. HOLLMAN: Then, in other words, dismiss against both.

MR. MEYERSON: I really think it is the same.

THE COURT: I don't agree it is the same

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1 because you have direct testimony as far as Sal
2 Cirami is concerned.

3 MR. MEYERSON: There is evidence and what does
4 the testimony say? The testimony says he spoke to
5 the truck drivers and therefore --

6 MR. HOLLMAN: Spoke with the employment agency,
7 if that means something to you.

8 MR. MEYERSON: (Continuing) --and therefore
9 came to an agreement with them orally; and also James
10 came to an agreement with them by writing.

11 MR. HOLLMAN: He signed something in the normal
12 business practice.

13 MR. MEYERSON: He signed an agreement setting
14 up the whole scheme, setting up the fact that they
15 were independent contractors, then signed the checks
16 which are endorsed by the bookkeeper and go right into
17 his own company, J. Trucking, which he is president of.

18 THE COURT: You are not telling the Court that
19 there is something wrong with setting up a business
20 like this. Of necessity, your argument must be that
21 there was an intent to defraud the government, of
22 cheating the taxes, on the basis of what they did, but
23 there is nothing wrong with setting up the business,
24 the law permits it. You cannot deny that. The fact
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he signed an agreement does not make it wrong.

And I'm sure anybody in the Internal Revenue Service will tell you that there is nothing wrong with that, otherwise, you could have charged these men back in '62, '64, '66 that they did it and they could have been indicted under those circumstances.

MR. MEYERSON: The proof of that is that they were shown the documents and never knew what the real relationship was.

THE COURT: Mr. Meyerson, you are not fooling me. You are not telling the Court that the mere fact that you swear to this type of an agreement is a scheme against the government. The government permits you to do certain things by way of the Internal Revenue rules and regulations, and there is no question about that.

MR. MEYERSON: But they don't permit you to do this; this is so blatant --

THE COURT: They don't permit you to defraud the government --

MR. MEYERSON: That is correct.

THE COURT: Yes, and that is different.

MR. MEYERSON: Your Honor, have you read the statute?

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1 THE COURT: Of course, and that is why I am
2 arguing with you.
3

4 MR. MEYERSON: It tells you so clearly what an
5 employee is, and every man is presumed to know the
6 law.

7 MR. HOLLMAN: We have two accountants and two
8 attorneys who will disagree with Mr. Meyerson.

9 MR. MEYERSON: That we have yet to see, if they
10 come in, that is for them to show.

11 My understanding as to what the testimony will
12 be is that it won't be what Mr. Hollman says.

13 THE COURT: I don't want to be influenced by
14 what the testimony will be which is coming before the
15 Court; I will wait for that. When I hear that, then I
16 will know.

17 MR. HOLLMAN: At best, what we have now is
18 Sal Cirami entering into an arrangement with the
19 truckers, fully describing to the truckers what the
20 relationship is; the truckers agree. Then we have
21 some ministerial act whereby after the truckers make
22 an agreement, and somewhere along the agreement, James
23 Cirami puts his signature on the thing, there are no
24 discussions or knowledge of anything, and as far as
25 any discussions with any truckers, there is nothing

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2 in it, any willingness at all in this case.

3 THE COURT: I have placed on the record what I
4 believe the situation is. I think at this time I
5 will deny, that is, at this point, to sever, and
6 they will go forward and we will see what happens;
7 but my reasons are on the record and I put my reasons
8 on the record for the purpose that I want everybody
9 to know what I am thinking.

10 MR. HOLLMAN: Your Honor, we will renew my
11 motion at another time.

12 MR. MEYERSON: The Government would move to
13 dismiss any counts dealing with the last quarter of
14 '69 through '70, and that would cover Counts 12, 13,
15 14 and 17.

16 THE COURT: 12, 13, 14 and 17?

17 MR. HOLLMAN: Can I have an explanation of that
18 why it is being done?

19 MR. MEYERSON: I don't think an explanation is
20 necessary. The Government feels that it does not
21 want to prosecute these counts and is informing the
22 Court at this point that the witnesses should confine
23 themselves now to the period in question and anything
24 covered afterwards would have no bearing.

25 MR. HOLLMAN: Is he trying to keep Mr. Johnson

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1 A13

2 off the stand?

3 MR. JOSEPH: He is trying to keep the account-
4 ant off the stand. This is amazing.

5 MR. HOLLMAN: Your Honor, I'm not going to go
6 along with this.

7 THE COURT: You object to the dismissal?

8 MR. HOLLMAN: I object to the dismissal of
9 any of those counts. I have the accountant and he
10 will speak of the industry --

11 MR. MEYERSON: He is objecting to the dismissal
12 of the counts?

13 MR. HOLLMAN: I object, and I would also state
14 to your Honor that Johnson's testimony is admissible
15 with regard to this man's intent.

16 MR. MEYERSON: Your Honor, I cannot understand--

17 THE COURT: He wishes to be prosecuted on the
18 entire indictment and he has a right to it, as far as
19 I know.

20 MR. MEYERSON: Even if we don't want to prose-
21 cute?

22 THE COURT: He has a right, he does not want
23 them dismissed, you cannot in the middle of the case.
24 You have already rested on all the counts in the
25 indictment.

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13 MR. HOLLMAN: I would like to renew all
14 the motions with regard to the entire indictment
15 as mentioned before and renew the motion as
16 against James Cirami on the ground the accountant's
17 testimony and the lawyer's testimony was that they
18 were advising the corporation how to proceed and
19 James Cirami's participation is no different as
20 it was at the end of the Government's case.

21 THE COURT: I feel there is sufficient, not
22 a great deal -- I think this is a borderline situa-
23 tion and I place that on the record --but I feel
24 there is sufficient for it to go to the jury.

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THE LAW CLERK: It is hereby stipulated
by and between the respective attorneys for the
respective parties in this action that an audit
was conducted in 1966 resulting in an assessment
of \$200,000 against Salvatore Cirami's personal
income tax liability. The audit disallowed everything

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2 that was filed. No notice was ever given to
3 Mr. Ciriame by the government that withholding
4 taxes had to be withheld. Nor was notice ever
5 given with respect to Social Security, unemploy-
6 ment or withholding taxes, with respect to truckers.
7 There was no notification as to the legality or
8 illegality of the conduct of the business
9 regarding Social Security, unemployment, and
10 withholding tax procedures.

11 It is further stipulated that Air Freight
12 Package is a successor corporation to Air Freight
13 Haulage, and Mr. Ciriame was doing business as
14 Air Freight Haulage at that time.

15 THE COURT: Is that it, now?

16 MR. MEYERSON: Yes, your Honor.

17 MR. HOLLMAN: Yes, your Honor.

18 THE COURT: I think I will let the steno-
19 grapher read the stipulation to the jury.

20 Bring in the jury, please.
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2 My third motion pertains to the validity
3 of the counts in the indictment. Last night I
4 did a little homework, and if your Honor has
5 a copy of the indictment in front of him -

6 THE COURT: I don't, but I remember what
7 is in it.

#3 8 MR. JOSEPH: I would like to point out a
9 certain phrase in the indictment --

10 THE COURT: Is that the last sentence in
11 the first count?

12 MR. JOSEPH: I am talking about the count
13 itself. Bear in mind, your Honor, that count
14 number one talks about a period from January first,
15 1967, to July 31, 1971. There has been no testi-
16 mony here about 1971. Not a single witness
17 testified as to any act or performance in 1971.
18 And it says that in the Eastern District of New
19 York, the defendants Cirami and Cirami, mention-
20 ing their positions with Air Package distribu-
21 tion service, limited, in Queens, did willfully
22 attempt to evade and defeat a large part of the
23 Federal income taxes, withholding from wages,
24 et cetera. Where has there been any testimony
25 adduced by the government that any tax like these

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2 taxes were withheld and not paid? There has
3 been no testimony at all about that.

4 THE COURT: The answer to the motion
5 you make and of course each and every specific
6 set forth in the count need not be proven, but
7 generally I think the count has been proven
8 sufficiently to go to a jury. I am not talking
9 about proof beyond a reasonable doubt. Sufficient
10 to go before a jury. I must agree with you that
11 this is not the best-written indictment. I am
12 not afraid to put on the record what I am
13 thinking. I think there are enough facts to go
14 to the jury.

15 MR. JOSEPH: I mention it for the record
16 on behalf of the defendants. The defendants claim
17 that the indictment itself, count number one
18 specifically, is defective as a matter of law.

19 You will also note in this count that
20 they charge that the defendants prepared and
21 caused to be prepared and that they filed and
22 caused to be filed -- there has been no
23 definition made on the trial from anybody from
24 Andover, Massachusetts, nor did I hear any
25 testimony from anyone that these returns were

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2 received by the government at Andover,
3 Massachusetts. There is no testimony at all.

4 Secondly, they talk about quarters.

5 THE COURT: I agree with that.

6 MR. JOSEPH: What does a quarter mean?
7 They don't say specifically the months of
8 January or February or March.

9 THE COURT: Nor do they specifically specify
10 the quarter.

11 MR. JOSEPH: Secondly, your Honor, and I
12 plead this again, that the government's amend-
13 ment by deleting the last whereas clause in
14 counts one through 14, is a fatal defect in the
15 government's case because it sets forth the
16 intent. You cannot sever an indictment where
17 intent is involved.

18 THE COURT: Not sever --

19 MR. JOSEPH: This is part of the material
20 allegation contained in the evasion count. As
21 the defendants --

22 THE COURT: They need not find evasion,
23 they can find that they counselled, and that is
24 why it is a catchall.

25 MR. JOSEPH: Not this one. This one says,

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2 did willfully attempt to evade and defeat.

3 THE COURT: All right.

4 MR. JOSEPH: Then it goes specifically to
5 the total taxable wage paid for said quarter.
6 I say that that is a defect in the government's
7 pleading. I say as a matter of law, this is
8 completely vague.

9 THE COURT: When it comes to that, it is
10 a question of whether or not the defendant knew
11 the charge against him and although vague as
12 to specifics, it is not vague as far as the
13 charge being made against them. They knew they
14 were being charged with doing something that
15 was improper.

16 I will deny the motion but adding, it
17 is a borderline case. It is an absolute border-
18 line indictment.

19 MR. JOSEPH: Formally, for the record,
20 I would say that your Honor has denied my
21 motion based upon my argument?

22 THE COURT: Right.

23 MR. JOSEPH: Would your Honor rule on
24 my --

25 THE COURT: On your first two, I would
say, there are sufficient facts to go to a jury.

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2 Again on the basis of the testimony proffered
3 and on the basis of a borderline situation.

4 MR. JOSEPH: My exception noted.
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5 MR. MEYERSON: They work full-time, every-
6 one has said that. Everyone said so, all the
7 truckers, except Mr. Ciriame.

8 There was testimony that Mr. Ciriame told
9 them that they were independent, that they
10 worked for many people and didn't work full-time.
11 Then Mr. Ciriame on cross-examination said,
12 "I don't remember any such -- well, I will read
13 the testimony in a moment. But all of a sudden
14 he has a vague recollection. Why would he tell
15 Mr. Paulina that, Mr. Paulina is an auditor and
16 he went beyond the surface. Mr. Paulina doesn't
17 have anything to work with except the books and
18 contracts which are fine if they were lived
19 up to. Some of the contract provisions were not
20 lived up to. That is why, on the surface, this
21 thing is fine.

22 Evidence in this case, I submit, points
23 very strongly to that Mr. Ciriame was a man of
24 expediency. In this case, he saved approximately
25 \$34,000 by this scheme.

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2 MR. HOLLMAN: I object to that.

3 MR. MEYERSON: That is the amount in the
4 indictment.

5 THE COURT: No, sustained.

6 MR. MEYERSON: I submit, ladies and
7 gentlemen, if you find Mr. Cirami did that, it
8 will add up to the approximate figure of \$34,000.

9 MR. HOLLMAN: I object to that.

10 THE COURT: Sustained.

11 MR. MEYERSON: You can add it up, ladies
12 and gentlemen, yourself.

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Charge of the Court

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4 Three essential elements are required
5 to be proved in order to establish the offenses
6 charged in counts 17 and 18 of the indictment:

7 First: The fact that the defendants
8 aided, assisted in, procured, counseled or
9 advised the preparation or presentation of
10 Information Returns (Form 1099) which were
11 false or fraudulent as to a material matter.

12 Second: The fact that the defendants
13 acted with knowledge that the Information Re-
14 turns in question were false or fraudulent as
15 charged; and

16 Third: That such acts were done willfully.

17 The issues to be decided by you under
18 these counts are:

19 (1) Whether the drivers were employees
20 or independent contractors; and

21 (2) If you find beyond a reasonable
22 doubt that the drivers were employees, then:

23 (a) Whether the defendants aided,
24 assisted in, procured, counseled or advised the
25 preparation or presentation of the Information

150a
Charge of the Court

100

Returns, and

(b) Whether the defendants knowingly and
willfully did so.

* * *

151a

JUDGMENT (SALVATORE CIRAMI).

JUDGMENT AND ORDER OF PROBATION (Revised Dec. '66)

Cr. Form No. 101

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

SALVATORE CIRAMI

No. 73 CR 413

CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

MAR 22 1974

TIME A.M.
P.M.

FILED

On this 22nd day of March, 1974, came the attorney for the government and the defendant appeared in person, and with counsel

IT IS ADJUDGED that the defendant upon ~~motion~~ a verdict of guilty

has been convicted of the offense of violating T-26, U.S.C. Secs. 7201, 7206(2), in that during the period from Jan. 1, 1967 to July 31, 1971, the defendant with another did wilfully attempt to defeat a large part of the federal income taxes withheld from wages and Federal Insurance Contribution Act taxes due and owing the U.S.A. by preparing and thereafter filing with I.R.S. Center false and fraudulent employer's quarterly tax returns

as charged in Counts 1-15, and 17-19 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is sentenced to pay a fine of \$300.00 each on counts 1-15 and \$100.00 each on counts 17-19 for a total fine of \$4,800, to run concurrently and the defendant is placed on probation for 2 years subject to the standard conditions of probation as set forth in the standing order of this court dated October 13, 1964

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

United States District Judge.

Clerk.

JUDGMENT (JAMES CIRAMI).

JUDGMENT AND ORDER OF PROBATION (Revised Dec. '66)

Cr. Form No. 101

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CLERK'S OFFICE
DISTRICT COURT, N.Y.

MAR 22 1974

UNITED STATES OF AMERICA

v.

JAMES CIRAMI

No. 73 CR 413

TIME A.M.
P.M.

FILED

On this 22nd day of March, 1974, came the attorney for the government and the defendant appeared in person, and with counsel

It Is ADJUDGED that the defendant upon his plea of a verdict of guilty

has been convicted of the offense of violating T-26, U.S.C. Secs. 7201, 7206(2) in that during the period from Jan. 1, 1967 to July 31, 1971, the defendant with another did wilfully attempt to defeat a large part of the federal income taxes withheld from wages and Federal Insurance Contribution Act taxes due and owing to the U.S.A. by preparing and thereafter filing with I.R.S. Center false and fraudulent employer's quarterly tax returns

as charged in Counts 1-15 and 17-19 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is sentenced to pay a fine of \$100.00 each on counts 1-14 and \$150.00 each on counts 15, 17-19 for a total fine of \$2,000.00, to run concurrently, and the defendant is placed on probation for 2 years subject to the standard conditions of probation as set forth in the standing order of this court dated October 13, 1964

It Is FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It Is FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

United States District Judge.

Clerk.

153a

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

NOTICE OF APPEAL

-v-

73 CR 413

SALVATORE CIRAMI
JAMES CIRAMI

Defendants

- - - - - X

Notice is hereby given that the defendants Salvatore Cirami and James Cirami, hereby appeals to the United States Court of Appeals for the Second Circuit from the final Judgment entered in this proceeding on the 22nd day of March, 1974.

Dated: New York, New York
April 1, 1974

LEWIS ORGEL, CLERK
United States District Court
Eastern District of New York
on behalf of the defendant

DANIEL P. HOLLMAN
600 Madison Ave.
New York, New York
688-4050
Attorney for Defendants
Salvatore Cirami and
James Cirami

To: Lewis Orgel, Clerk
U.S. District Court
Eastern District of
New York